

**CHALLENGER WINE TRUST  
EXPLANATORY MEMORANDUM AND NOTICE OF MEETING**

16 December 2010, Sydney: Further to the announcement made on 8 November 2010 regarding a Proposal which, if approved and implemented, will result in CK Life Sciences Int'l., Inc. or its nominee, owning all of the Units in the Challenger Wine Trust (ASX:CWT) that are not held by or on behalf of Challenger Life Company Limited or its controlled entities, we attach a copy of the Explanatory Memorandum and Notice of Meeting.

Despatch of the Explanatory Memorandum and Notice of Meeting to Unitholders is expected to be on or around 20 December 2010.

**For further information, please contact:**

**CWT Unitholder Information Line**  
1800 830 977 (within Australia)  
+61 2 8280 7492 (outside Australia)

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Investor Relations  
Challenger Wine Trust  
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# Challenger Wine Trust

## Explanatory Memorandum and Notice of Meeting

### Explanatory Memorandum and Notice of Meeting

in relation to a Proposal which, if approved and implemented, will result in CK Life Sciences Int'l., Inc. or its nominee, owning all of the Units in the Challenger Wine Trust that are not held by or on behalf of Challenger Life Company Limited or its controlled entities.

**The Independent Directors unanimously recommend that you vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.**

This is an important document and requires your immediate attention.

You should read this document in its entirety before deciding how to vote.

If you are in doubt as to what you should do, you should consult your legal, investment, taxation or other professional adviser without delay.

Challenger Wine Trust  
(ARSN 092 960 060)

Responsible Entity  
Challenger Listed Investments Limited  
(ABN 94 055 293 644)  
(AFSL 236887)



## **IMPORTANT NOTICES**

### **What is this document?**

The purpose of this Explanatory Memorandum is to provide Unitholders with information about the Proposal which, if approved and implemented, will result in CKLS owning all of the Units in CWT that are not held by or on behalf of the CLC Group and the Scheme Participants receiving \$0.24 cash per Scheme Unit.

This document is the notice of meeting and explanatory memorandum for the Scheme and provides such information as is prescribed or otherwise material to the decision of Unitholders on how to vote on the Resolutions at the Meeting.

### **Date**

This Explanatory Memorandum is dated 16 December 2010.

### **General**

Unitholders should read this Explanatory Memorandum in its entirety before making a decision as to how to vote on the Resolutions to be considered at the Meeting.

If you have any questions about the Proposal or the Scheme, please contact the Unitholder Information Line 1800 830 977 OR +61 2 8280 7492 (outside Australia). For information about your individual financial or taxation circumstances, please consult your investment, legal, taxation or other professional adviser.

### **No investment advice**

This Explanatory Memorandum does not constitute financial product advice and has been prepared without reference to your particular investment objectives, financial situation, tax situation or needs. This Explanatory Memorandum should not be relied on as the sole basis for any investment decision. Independent financial and taxation advice should be sought before making any investment decision in relation to your Units and how you vote on the Resolutions.

### **Responsibility for information**

Except as outlined below, the information in this Explanatory Memorandum has been provided by CLIL and is the responsibility of CLIL. Neither CKLS nor any of its directors, officers and advisers assumes any responsibility for the accuracy or completeness of any such CLIL information.

CKLS has provided and is responsible for all information contained in Section 5 of this Explanatory Memorandum, including information as to the funding arrangements it has made to provide the Scheme Consideration for the Scheme Units, information about the CKLS Group and the CLC Group, information as to CKLS's opinions, views, intentions and decisions in relation to CWT, including the arrangements as between the CKLS Group and the CLC Group as to the future conduct of the affairs of CWT as set out in the Securityholders Deed (**CKLS Information**). CKLS is satisfied that the references and statements in it with respect to the CLC Group are correct, including with respect to the arrangements as between the CKLS Group and the CLC Group as to the future conduct of the affairs of CWT as set out in the Securityholders Deed.

CLIL and its directors, officers and advisers do not assume any responsibility for the accuracy or completeness of the CKLS Information.

The Independent Expert has provided and is responsible for the information contained in Attachment E of this Explanatory Memorandum. Neither CLIL nor CKLS nor any of their respective directors, officers and advisers assumes any responsibility for the accuracy or completeness of the information contained in Attachment E. The Independent Expert does not assume any responsibility for the accuracy or completeness of the information contained in this Explanatory Memorandum other than that contained in Attachment E. However, CLIL has provided the Independent Expert with factual information relating to CWT which the Independent Expert has relied on in preparing the Independent Expert Report. CLIL assumes responsibility for the accuracy and completeness of that factual information contained in Attachment E of this Explanatory Memorandum.

Blake Dawson has provided and is responsible for the information contained in Attachment F of this Explanatory Memorandum. Neither CLIL nor CKLS nor any of their respective directors, officers and advisers assumes any responsibility for the accuracy or completeness of the information contained in Attachment F. Blake Dawson does not assume any responsibility for the accuracy or completeness of the information contained in this Explanatory Memorandum other than that contained in Attachment F.

### **ASIC and ASX involvement**

Neither ASIC nor any of its officers takes any responsibility for the contents of this Explanatory Memorandum.

Neither ASX nor any of its officers takes any responsibility for the contents of this Explanatory Memorandum.

### **Disclosure regarding forward-looking statements**

This Explanatory Memorandum contains both historical and forward-looking statements in connection with CWT, the CKLS Group and the CLC Group.

The forward-looking statements in this Explanatory Memorandum are not based on historical facts, but reflect the current expectations of CLIL or, in relation to the CKLS Information, CKLS, concerning future results and events and generally may be identified by the use of forward-looking words or phrases such as 'believe', 'aim', 'expect', 'anticipated', 'intending', 'foreseeing', 'likely', 'should', 'planned', 'may', 'estimated', 'potential', or other similar words and phrases. Similarly, statements that describe CLIL's and CKLS's objectives, plans, goals or expectations are or may be forward-looking statements.

These forward-looking statements involve known and unknown risks, uncertainties, assumptions and other factors that may cause either CWT's, the CKLS Group's or the CLC Group's actual results, performance or achievements to differ materially from the anticipated results, performance or achievements expressed, projected or implied by these forward-looking statements. Deviations as to future results, performance and achievements are both normal and to be expected. Unitholders should review carefully all of the information, including the financial information, included in this Explanatory Memorandum.

The forward-looking statements included in this Explanatory Memorandum are made only as of the date of this Explanatory Memorandum. While CLIL and CKLS believe the expectations reflected in the forward looking statements in respect of which each of them is responsible in this Explanatory Memorandum are reasonable, neither CLIL nor CKLS gives any representation, assurance or guarantee to Unitholders that any forward-looking statements will actually occur or be achieved. Unitholders are cautioned not to place undue reliance on such forward-looking statements.

Subject to any continuing obligations under law or the ASX Listing Rules (including those identified in Sections 6.11, 6.13 and 6.19), CLIL and CKLS do not give any undertaking to update or revise any forward-looking statements after the date of this Explanatory Memorandum to reflect any change in expectations in relation to those statements or any change in events, conditions or circumstances on which any such statement is based.

### **Privacy and personal information**

CLIL will need to collect personal information to implement the Proposal. The personal information may include the names, contact details and details of holdings of Unitholders, plus contact details of individuals appointed by Unitholders as proxies, corporate representatives or attorneys at the Meeting. The collection of some of this information is required or authorised by the Corporations Act. Unitholders who are individuals, and other individuals in respect of whom personal information is collected, have certain rights to access the personal information collected about them and can contact the Company Secretary by calling +61 (02) 9994 7000 if they wish to exercise those rights.

The information may be disclosed to print and mail service providers, and to CKLS and the CKLS Nominee and their respective advisers to the extent necessary to effect the Proposal. If the information outlined above is not collected, CLIL may be hindered in, or prevented from, conducting the Meeting or implementing the Proposal effectively or at all. Unitholders who appoint an individual as their proxy, corporate representative or attorney to vote at the Meeting should inform that individual of the matters outlined above.

### **Defined terms**

Capitalised terms used in this Explanatory Memorandum and proxy form are defined in the Glossary.

### **Currency and rounding**

All financial amounts contained in this document are expressed in Australian currency unless otherwise stated. Some amounts (including percentages) in this document have been rounded and as a result some totals may not add up exactly.

### **Time**

Unless stated otherwise, all references to time in this Explanatory Memorandum are to Australian Eastern Daylight Time, being the time in Sydney, Australia.

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# Chair's letter

16 December 2010

Dear Unitholder

Challenger Wine Trust (**CWT**) has traditionally offered investors exposure to the Australian and New Zealand wine industries and vineyard sectors, providing unitholders with returns derived from rental income.

As you would be aware from our communications, the Australian wine industry and vineyard sector has been going through difficult times over the past two years. Initially impacted by the global financial crisis, the industry continues to be impacted by other factors including an ongoing oversupply of wine grapes, reduced wine grape prices and more recently, the strengthening of the Australian dollar. A similar situation exists in New Zealand.

The consequences of these issues on CWT are evident in the diminished value of its vineyard properties and the reduced profitability of many of its tenants. Since 30 June 2008, the value of CWT's current property portfolio has fallen \$74 million from \$286 million to \$212 million on a pro forma basis, representing a 26% fall. Over the same period, CWT's net independent value (**NIV**) per unit has fallen from \$0.94 to \$0.41 on a pro forma basis.

The fall in property values increases CWT's gearing relative to covenants imposed by its banks. CWT's banks have provided relief from covenant testing as at 31 December 2010 while the proposal from CK Life Sciences Int'l., Inc. (**CKLS**) (described in detail below) is being considered. Based upon pro forma calculations, this relief may not be needed.

While at the operating profit level CWT has continued to perform strongly, it is estimated that as at 30 June 2010, CWT's rental income was 24.6% higher than would be achieved if the CWT properties were re-leased in the current market.

The Board of Challenger Listed Investments Limited (**CLIL**), the responsible entity of CWT, has pursued a range of capital management initiatives to reduce debt, including a distribution reinvestment plan, property sales, and more recently retaining distributions to pay down debt.

However these initiatives have not been sufficient to stem the impact of property writedowns on CWT's gearing.

In addition, CWT's banks have indicated that any refinancing would require a greater reduction in gearing than originally anticipated, necessitating a repayment of a significant portion of current debt. One of CWT's debt facilities, with a debt balance of approximately \$64 million (including interest rate swaps), matures in May 2011 and will require re-financing by this time.

Since June 2010, CWT has undertaken an extensive process to pursue an equity raising and has been in confidential discussions with a range of potential sub-underwriters. It was through this process that CKLS was introduced to us, initially to participate as a potential sub-underwriter in a rights issue. CKLS would not support a rights issue but wished to acquire a controlling stake in CWT. CKLS's proposal was made on the basis that Challenger Life Company Limited (**CLC**) retains its minority 27.7% holding as the only other unitholder in CWT, so that CLC would provide support to CWT going forward. Following extensive negotiations, CLC has agreed to support this proposal.

## The Proposal

On 8 November 2010, CLIL announced that it had entered into a Scheme Implementation Agreement with CKLS. Under that agreement, CLIL agreed to put CKLS's proposal to unitholders. If approved and implemented, the proposal will result in CKLS owning all of the units in CWT other than those units owned by CLC, and the Scheme Participants receiving \$0.24 cash per Scheme Unit (**Proposal**). The Proposal is subject to the approval of unitholders and certain other conditions being satisfied, including approval from the New Zealand Overseas Investment Office.

The Independent Directors believe that the Proposal, in the absence of a superior proposal, represents the best outcome for CWT and its unitholders when considered against CWT's alternative options. Further, the Independent Directors believe that the Proposal provides

an opportunity for unitholders to realise certainty of value for their investment in CWT.

The Scheme Consideration of \$0.24 cash per Scheme Unit represents a 41% discount to the Pro Forma NIV of \$0.41 per unit. However, the units were trading at a 61% discount to NIV on 1 November 2010<sup>1</sup>, and have traded at an average discount to NIV of 58% over the 12 months to 1 November 2010.

Importantly, the Scheme Consideration reflects a significant premium to the trading price of CWT units prior to the announcement of the Proposal. Specifically, the Scheme Consideration reflects a:

- 26.3% premium to the last closing price of \$0.19 on 1 November 2010 (being the last trading day before the Proposal was announced on 8 November 2010);
- 53.9% premium to the one month VWAP up to and including 1 November 2010 of \$0.156;
- 40.7% premium to the 3 month VWAP up to and including 1 November 2010 of \$0.171; and
- 21.9% premium to the 6 month VWAP up to and including 1 November 2010 of \$0.197.

## Recommendation

The Independent Directors unanimously recommend that you vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

In unanimously recommending the Proposal, the Independent Directors have carefully considered the following issues:

- the Board's detailed review of capital management and other alternatives;
- the value of the Scheme Consideration of \$0.24 cash per unit, while at a 41% discount to Pro Forma NIV, is a substantial premium to the pre-announcement trading price of units;
- the uncertain outlook for the wine industries and vineyard sectors in Australia and New Zealand;
- the uncertain prospects for CWT in the absence of an underwritten rights issue and the uncertainty over whether an underwritten rights issue of sufficient magnitude could be achieved;

- the consequences for CWT if the Proposal does not proceed;
- the ability for unitholders to receive certainty of value through cash consideration; and
- the conclusions of the Independent Expert.

## Capital management and other alternatives considered by the Board

The Board has considered the following alternatives (either as stand-alone or in combination):

- recapitalising through an underwritten rights issue;
- retention of distributions;
- targeted asset sales; and
- an orderly wind up.

Each of these options is subject to execution risk, timing uncertainties and/or will result in significant dilution of NIV, earnings and distributions per Unit. For these reasons, the Board believes that the Proposal is the best option available to CWT unitholders.

## Consequences if the Proposal does not proceed

The Board does not consider that maintaining the status quo is a viable option for CWT because of the need to reduce debt prior to the first debt maturity in May 2011.

In the event the Proposal does not proceed, CWT will remain listed on ASX and the Board believes it will need to attempt an underwritten rights issue to lower CWT's gearing significantly. Prior to receiving the Proposal from CKLS, CWT was seeking to implement an underwritten rights issue of around \$50 million to \$60 million. The Board, on advice from its advisor, Bell Potter Securities Ltd, and investor feedback, believes there is uncertainty that investor appetite would be sufficient to underwrite a rights issue of that magnitude.

If it could be achieved, the Board considers that an underwritten rights issue would:

- be at a significant discount to the Scheme Consideration and a discount to the trading price of the CWT units before the Proposal was announced;
- require existing unitholders to commit substantial additional capital relative to their existing unit holding if they wished to maintain their proportional ownership interest in CWT; and

<sup>1</sup> Based on NIV at 30 June 2010 of \$0.49.

- be dilutive to NIV, earnings and distributions per Unit.

We have included in Section 3.5 a table providing two illustrative examples of underwritten rights issues based on a number of assumptions. Whilst the table indicates that a \$44 million underwritten rights issue would satisfy the minimum pay down acceptable to one of CWT's banks and achieve 5% asset value headroom on the second facility, the Board believes that this would not provide CWT with a reasonable level of gearing. Furthermore, based on investor feedback it has received, the Board's advisor believes that the level of asset value headroom that would result would be too low to attract investors to sub-underwrite such a rights issue.

The Board believes that asset value headroom of 20% across its facilities is a reasonable level for CWT. In order to achieve this, the second illustrative example referred to above indicates that a \$56 million underwritten rights issue would be required. Based on the assumptions outlined, this would:

- require existing Unitholders to subscribe for approximately 2.8 new units for each Unit that they hold if they wished to maintain their proportional ownership interest in CWT; and
- dilute NIV per unit to approximately \$0.18.

In summary, the Proposal from CKLS represents certainty of value compared to an uncertain and highly dilutive rights issue that would require a significant capital injection from existing unitholders and external investors to be successful.

### Independent Expert's opinion

The Independent Directors appointed KPMG to prepare an Independent Expert's Report. The Independent Expert has been asked to consider whether the Proposal is fair and reasonable for CWT unitholders not associated with CKLS (**Non-Associated Unitholders**) and to provide the expert's reasons for forming that opinion.

The Independent Expert concluded that the Proposal is not fair but is reasonable to Non-Associated Unitholders.

The Independent Expert has concluded that the Proposal is not fair based on a comparison of its estimate of the market value of a unit (on a control basis in accordance with ASIC Regulatory Guide 111) to the value of the Scheme Consideration offered under the terms of the Proposal.

The Independent Expert estimated the market value of a Unit on a control basis to be \$0.41, which is more than the value of the Scheme Consideration of \$0.24 cash per Scheme Unit.

In assessing fairness, the Independent Expert estimated the market value of a Unit on a control basis using the net assets approach that estimates the market value of CWT by aggregating the fair market value of its assets less its liabilities. This approach fully incorporates the value of CWT's investment properties but does not take into account CWT's obligation to pay management fees as well as the specific circumstances currently affecting CWT, such as near term debt maturities, potential covenant breaches and capital constraints that may be included in the trading price of CWT. However, the Independent Expert formed the view that these and other factors are likely to impact the value realisable by Non-Associated Unitholders in the absence of the Proposal, and has considered these factors in its assessment of the reasonableness of the Proposal.

In its assessment of whether the Proposal is reasonable, the Independent Expert also had regard to traded entity discounts to NAV, observed discounts to NAV applicable to Australian property trusts and whether the advantages of the Proposal proceeding sufficiently outweighed the disadvantages for Non-Associated Unitholders and any other pertinent factors.

In addition to this opinion, the Independent Directors also requested that the Independent Expert express an opinion as to whether the Proposal is in the best interests of the Non-Associated Unitholders.

The Independent Expert, having regard to the same factors considered above, and the alternative strategic options available to CWT on a stand-alone basis and the likelihood of a superior proposal emerging, concluded that the Proposal is in the best interests of the Non-Associated Unitholders.

A copy of the Independent Expert's Report, including the reasons for the opinions, is set out in Attachment E.



### How to vote

The Proposal will only proceed if approved by unitholders at a meeting to be held at 3.00 pm on Monday, 31 January 2011, in the Lyceum Room in the Wesley Centre, 220 Pitt Street, Sydney.

Unitholders are encouraged to attend the Meeting and vote in favour of the Resolutions. You may also vote by returning the enclosed proxy form in accordance with the instructions on the form.

### Further information

This Explanatory Memorandum contains important information in relation to the Proposal, including the reasons for the Independent Directors' recommendation and an explanation of the Proposal. Please read the Explanatory Memorandum carefully before making your decision and voting at the Meeting.

If you have any questions about the Proposal, please contact the Unitholder Information Line 1800 830 977 OR +61 2 8280 7492 (outside Australia) or visit CWT's website at [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt).

This Explanatory Memorandum should not be relied upon as the sole basis for any investment decision. I encourage you to seek independent investment, legal, taxation or other professional advice before making a decision in relation to your units and how you vote on the Resolutions.

Yours faithfully



### **Brenda Shanahan**

Chair  
Challenger Listed Investments Limited



# Reasons to vote for the Proposal

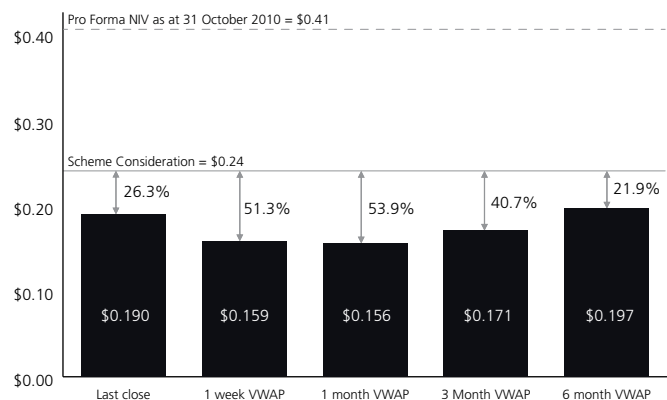
The Independent Directors unanimously recommend that Unitholders vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal. Reasons to vote for the Proposal include the following:

## 1. Premium to pre-announcement trading price

The Scheme Consideration of \$0.24 cash per Scheme Unit represents a 41% discount to the Pro Forma NIV of \$0.41 per Unit, however the Units were trading at a 61% discount to NIV on 1 November 2010<sup>2</sup> and have traded at an average discount to NIV of 58% in the 12 months up to and including 1 November 2010. The Scheme Consideration therefore reflects a significant premium to the trading price of the Units prior to the announcement of the Proposal. Specifically, the Scheme Consideration reflects a:

- 26.3% premium to the last closing price of \$0.19 on 1 November 2010 (being the last trading day before the Proposal was announced on 8 November 2010);
- 51.3% premium to the one week VWAP up to and including 1 November 2010 of \$0.159;
- 53.9% premium to the one month VWAP up to and including 1 November 2010 of \$0.156;
- 40.7% premium to the three month VWAP up to and including 1 November 2010 of \$0.171; and
- 21.9% premium to the six month VWAP up to and including 1 November 2010 of \$0.197.

## Scheme Consideration compared to pre-announcement trading prices



## 2. Uncertain outlook for the wine industries and vineyard sectors in Australia and New Zealand

The short to medium term outlook and expected turnaround timeframes for the wine industries and vineyard sectors in Australia and New Zealand remains uncertain as a result of the following issues:

- the impact of the GFC in key export markets, continuing high exchange rates and competing exports from South America has been felt across both countries' wine industries;
- a current surplus in Australian and New Zealand vineyard production capacity has resulted in lower grape prices in both countries;
- the stronger Australian and New Zealand currencies and the associated pricing impact on wines from both countries, means that other new world wines (Chile, Argentina and South Africa) have become more attractive to overseas buyers;

<sup>2</sup> Based on NIV at 30 June 2010 of \$0.49.

- in Australia, industry commentators recognise there may be a further 20-30,000 ha of vineyards that need to be removed based on current wine sales demand, in order to re-balance demand and supply. This represents approximately 13-20% of total vineyards in Australia. There is less likelihood of significant vineyard removal in New Zealand; and
- more recently, the release of the Murray-Darling Basin Authority's Basin Strategic Plan has provided further uncertainty for the sector. The Basin Plan has provided preliminary indicative limits on the amount of water that can be taken from the Basin's water resources. If applied, these limits would negatively impact a number of the properties in the CWT portfolio.

In this environment, since 30 June 2008, the value of CWT's current property portfolio has fallen \$74 million from \$286 million to \$212 million on a pro forma basis, representing a 26% fall.

### 3. Consequences if the Proposal does not proceed

In the absence of the Proposal, the Board believes that CWT would require a significant underwritten rights issue, as maintaining the status quo is not a sustainable option for CWT in light of the challenges it faces, including:

- continued uncertainty regarding the wine industries and vineyard sectors in Australia and New Zealand;
- its high gearing level relative to banking covenants;
- the impending maturity of a banking facility in May 2011 with a debt balance of \$64 million (including interest rate swaps) which will require re-financing with a lower level of gearing;
- banks requiring tighter gearing covenants upon any re-financing; and
- CWT's reduced attractiveness to investors driven by a lack of scale, relatively illiquid Unit trading and limited growth prospects.

The Board has therefore examined a range of capital management alternatives to address CWT's issues, including an underwritten equity raising, the retention of distributions, property sales and an orderly wind-up.

The Board has undertaken an extensive process to explore an underwritten equity raising and there remains uncertainty as to whether it is achievable. If a raising of sufficient size could be achieved:

- it is likely to be at a significant discount to the Scheme Consideration and a discount to the trading price of the Units before the Scheme was announced;
- it would require existing Unitholders to commit substantial additional capital relative to their existing holding if they wished to maintain their proportional ownership interest in CWT;
- it would result in a significant dilution of NIV per Unit;
- it would result in a significant dilution of earnings and distributions per Unit; and
- the value Unitholders may realise for their Units is uncertain and subject to a number of risks.

This is further discussed in Sections 3.5 and 3.7.

### 4. Certainty of value of an all cash offer

The Scheme Consideration of \$0.24 per Scheme Unit provides value certainty for Unitholders if the Proposal is approved and implemented. In contrast, if the Proposal does not proceed, CWT would need to attempt a significant underwritten rights issue and the value Unitholders may realise for their Units is uncertain and subject to a number of risks.

### 5. The Independent Expert's opinion

The Independent Expert concluded that the Proposal is not fair but is reasonable and in the best interest of the Non-Associated Unitholders.

The Independent Expert has concluded that the Proposal is not fair based on a comparison of its estimate of the market value of a Unit (on a control basis in accordance with ASIC Regulatory Guide 111) to the value of the Scheme Consideration offered under the terms of the Proposal.

The Independent Expert estimated the market value of a Unit on a control basis to be \$0.41, which is more than the value of the Scheme Consideration of \$0.24 cash per Scheme Unit.

In assessing fairness, the Independent Expert estimated the market value of a Unit on a control basis using the net assets approach that estimates the market value of CWT by aggregating the fair market value of its assets less its liabilities. This approach fully incorporates the value of CWT's investment properties but does not take into account CWT's obligation to pay management fees as well as the specific circumstances currently affecting CWT, such as near term debt maturities, potential covenant breaches and capital constraints that may be included in the trading price of CWT. However, the Independent Expert formed the view that these and other factors are likely to impact the value realisable by Non-Associated Unitholders in the absence of the Proposal and have considered these factors in its assessment of the reasonableness of the Proposal.

In its assessment of whether the Proposal is reasonable, the Independent Expert also had regard to traded entity discounts to NAV, observed discounts to NAV applicable to Australian property trusts and whether the advantages of the Proposal proceeding sufficiently outweighed the disadvantages for Non-Associated Unitholders and any other pertinent factors.

The Independent Expert, having regard to the same factors considered above, and the alternative strategic options available to CWT on a stand-alone basis and the likelihood of a superior proposal emerging, concluded that the Proposal is in the best interests of the Non-Associated Unitholders.

More detail concerning the Independent Expert's opinion that the Proposal is not fair but reasonable and in the best interests of the Non-Associated Unitholders is contained on pages 6 to 14 of the Independent Expert's Report which is set out in full in Attachment E.

### **6. No superior proposal has emerged**

Since the announcement of the Proposal to ASX on 8 November 2010, no superior proposal has emerged.

If an alternative proposal is made to CLIL involving CWT, the Independent Directors will review that proposal to determine if it represents a superior proposal to Unitholders and advise you of their recommendation.

CLIL has undertaken to CKLS not to solicit competing proposals but it is not prevented from responding to unsolicited competing proposals. In the event of a superior proposal being announced and completed within a certain period of time, CLIL will be obliged to reimburse CKLS for its actual external costs incurred up to a maximum amount of \$330,000 (plus GST). For more details on these arrangements, see Sections 2.32 and 2.33.

### **7. No brokerage or stamp duty**

You will not incur any brokerage or stamp duty on the transfer of your Units pursuant to the Scheme.

# Reasons to vote against the Proposal

Although the Independent Directors unanimously recommend that you vote in favour of the Proposal, in the absence of a superior proposal, factors which may lead you to vote against the Proposal include the following:

## 1. Disagreement regarding the relative merits of the alternatives available to CWT

You may not agree with the view of the Independent Directors that the Proposal is the best option for Non-Associated Unitholders and CWT.

## 2. Maintain investment in CWT

Notwithstanding CWT's requirements for significant additional capital, you may wish to maintain an interest in CWT because you are seeking to maintain exposure to a publicly listed entity with the specific characteristics of CWT such as operational profile (including historical operating profits, low vacancy rates and above market rents), capital structure, size and geography.

## 3. Consequences if the Proposal does not proceed

You may consider it possible for CWT to raise sufficient capital through a rights issue or other means to be in a position to meet its re-financing obligations in May 2011 and reduce its gearing to a sustainable level.

## 4. The Scheme Consideration is at a discount to CWT's Pro Forma NIV

You may consider that the Proposal undervalues your Units as the Scheme Consideration of \$0.24 cash per Scheme Unit represents a 41% discount to CWT's Pro Forma NIV of \$0.41 per Unit and you believe that the Scheme Consideration does not reflect the realisable long-term value of CWT.

## 5. Potential appreciation of CWT's portfolio of properties and Units

You may take the view that a solution to CWT's re-financing and gearing issues will be found, that the Proposal involves you selling your Units at a time when the wine industry is at or near the bottom of a cycle and that the future rentals (and property values) of CWT's property portfolio will recover to historical levels. You may therefore consider that approving the Proposal would eliminate the possibility of participating in any future capital appreciation in the value of CWT's property portfolio and Units.

## 6. The Independent Expert's opinion

The Independent Expert has concluded that the Scheme is not fair because the value of the Scheme Consideration of \$0.24 cash per Scheme Unit is less than the Independent Expert's estimate of the market value of a Unit (on a control basis) of \$0.41 per Unit.

Attachment E contains a complete copy of the Independent Expert's Report which Unitholders should read in full.

## 7. Expectation of a superior proposal

You may consider that there is the potential for a superior proposal to be made.

Since the announcement of the Proposal to ASX on 8 November 2010, no superior proposal has emerged.

If an alternative proposal is made to CLIL involving CWT, the Independent Directors will review that proposal to determine if it represents a superior proposal to Unitholders and advise you of their recommendation.

CLIL has undertaken to CKLS not to solicit competing proposals but it is not prevented from responding to unsolicited competing proposals. In the event of a superior proposal being announced and completed within a certain period of time, CLIL will be obliged to reimburse CKLS for its actual external costs incurred

up to a maximum amount of \$330,000 (plus GST).  
For more details on these arrangements, see Sections 2.32 and 2.33.

## **8. Taxation consequences**

Approval and implementation of the Scheme may result in adverse tax consequences for Unitholders. Whilst the taxation consequences will vary depending on the personal taxation and financial circumstances of each Unitholder, possible adverse tax consequences of the Scheme for Australian resident Unitholders may include crystallising a gain which may result in a tax liability which may otherwise have been deferred had the Scheme not been implemented. However, some Australian resident Unitholders may make a tax or capital loss. Accordingly, Unitholders should evaluate the capital gains or other tax consequences of acceptance in assessing whether to approve the Scheme.

General information about some of the Australian tax consequences for Unitholders is set out in Attachment F.

Please note that the Independent Expert's Report also contains a discussion of the advantages and disadvantages of the Proposal on pages 11 to 13 of that report. A complete copy of the Independent Expert's Report is contained in Attachment E.

# Background

## 1. The Scheme

On 8 November 2010, CLIL (the responsible entity of CWT) announced to ASX that it had entered into a Scheme Implementation Agreement with CKLS pursuant to which CLIL agreed to give Unitholders the opportunity to consider the Proposal. A copy of the Scheme Implementation Agreement is set out in Attachment C.

The Proposal will be implemented by way of the Scheme which is a trust scheme, which is an arrangement to be implemented in accordance with Guidance Note 15. The Scheme involves the Scheme Units being transferred to CKLS in return for a cash payment to Scheme Participants of \$0.24 cash per Scheme Unit and is being facilitated by an amendment to the Trust Constitution as set out in the Supplemental Deed.

The Scheme is conditional on the Resolutions being approved by the requisite majorities of Unitholders at the Meeting and a number of other conditions. If the Scheme is implemented, Scheme Participants will receive a payment of \$0.24 cash in respect of each Scheme Unit they hold on the Record Date. CWT will subsequently be delisted from ASX.

The Independent Directors unanimously recommend that you vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

**REFER TO SECTION 4 FOR FURTHER DETAILS IN RELATION TO THE BACKGROUND AND IMPLEMENTATION OF THE SCHEME.**

## 2. Industry conditions impacting CWT

As set out in CWT's past presentations and announcements, CWT has been impacted by poor conditions in the Australian and New Zealand wine industries and vineyard sectors which have resulted in a \$74 million fall in the valuation of CWT's current property portfolio since 30 June 2008 from \$286 million to \$212 million on a pro forma basis, representing a 26% fall.

Industry conditions remain challenging as a result of a continuing oversupply of wine grapes in Australia and New Zealand, with industry commentators having varying views on the timing of an industry turnaround.

The uncertainty in the industry and the impact of falling property values have been reflected in CWT's Unit price performance. Units traded as low as 13.5c on 22 October 2010, reflecting a discount to NIV of 72%<sup>3</sup> and have traded at an average discount to NIV of 58% in the 12 months to 1 November 2010.

While operating profit has remained sound, CWT's gearing has increased due to the fall in property valuations over the last two years. With industry conditions remaining uncertain, on a pro forma basis the value of CWT's current property portfolio has fallen a further \$23.2 million since 30 June 2010 (including foreign currency movements). See Section 3.1 for further information on these falls in property values. CWT's banks have provided relief from covenant testing as at 31 December 2010 while the Proposal is being considered.

**REFER TO SECTIONS 3.1 TO 3.4 FOR FURTHER BACKGROUND TO CWT'S PROPERTY PORTFOLIO, UNIT PRICE PERFORMANCE AND INDUSTRY CONDITIONS IMPACTING CWT.**

## 3. Capital management initiatives to date

In order to address CWT's gearing issues, the Board has undertaken a range of activities. The Board has been actively seeking to sell property since 2008. In 2009, CWT sought expressions of interest for its New Zealand property portfolio. A number of interested parties undertook due diligence on the properties but no formal offers were received. Since then, CWT has achieved sales of some of its smaller Australian properties listed in the table in Section 3.5(c), but no large sales have occurred.

<sup>3</sup> Based on NIV at 30 June 2010 of \$0.49.



For the half-year to 31 December 2009, CWT undertook an underwritten distribution reinvestment plan to preserve capital. Excluding CLC, Unitholders holding approximately 16% of Units immediately before the DRP participated. CLC participated in respect of its full 27.7% holding.

On 10 June 2010, CWT announced that it was retaining approximately \$6 million of its half-yearly distribution to immediately reduce debt and maintain compliance with its banking covenants as at 30 June 2010.

Since June 2010, the Board has actively pursued an underwritten equity raising. As part of this process, it has approached CWT's banks and other banks to establish their willingness to finance CWT and the terms on which that finance would be made available. This has been a significant focus due to the impending debt maturity, and potential repayment of one of CWT's banking loans in May 2011.

In pursuing an underwritten equity raising, CKLS was introduced to CWT, initially to participate as a potential sub-underwriter of an equity raising in the form of a rights issue. CKLS would not support a rights issue but wished to acquire a controlling stake in CWT. CKLS's proposal was made on the basis that CLC retains its minority 27.7% holding as the only other Unitholder in CWT, so that CLC would provide support to CWT going forward. Following an extensive negotiation, CLC agreed to support this proposal.

#### **4. Capital management alternatives considered by the board**

In forming their recommendation that Unitholders vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal, the Independent Directors have carried out an analysis of potential capital management alternatives for CWT. These alternatives are described in paragraphs (a) to (e) below.

If the Proposal does not proceed, the Board believes that:

- the Units are likely to trade at materially less than the Scheme Consideration of \$0.24 per Unit; and
- CWT will need to attempt to undertake a recapitalisation through an underwritten rights issue.

#### **(a) Maintaining the status quo**

The Board believes that maintaining the status quo is not a sustainable option for CWT, as:

- while operating profits have remained sound to date, there remains significant uncertainty regarding the wine industries and vineyard sectors in Australia and New Zealand and the impact this may have on CWT and its tenants;
- CWT has high current gearing relative to its banking covenants;
- CWT has an impending bank re-finance of one of its facilities in May 2011 with a debt balance of \$64 million (including interest rate swaps), which will require re-financing with a lower level of gearing;
- CWT's banks will require lower gearing covenants on any refinancing; and
- CWT has reduced attractiveness to investors driven by lack of scale, relatively illiquid Unit trading and limited growth prospects.

#### **(b) Recapitalising through an underwritten rights issue**

Since June 2010, the Board has pursued a recapitalisation through an underwritten equity raising to reduce gearing. CWT and its adviser have undertaken an extensive process to seek to secure sub-underwriting for such a raising. Based on feedback from potential investors that were approached during this process, there is uncertainty regarding CWT's ability to raise sufficient capital to achieve what the Board believes to be a reasonable level of gearing.

If CWT were to be able to raise sufficient capital through a rights issue, the Board believes it would require existing Unitholders to contribute significant additional capital to CWT to maintain their current proportional ownership interest, and the rights issue would be significantly dilutive to NIV, earnings and distributions per Unit.

Two worked examples of potential rights issues are set out below based on a subscription price of 10.5c per new Unit and the outcome of discussions with CWT's banks regarding refinancing. The subscription price of 10.5c per new Unit was a price at which some interest in sub-underwriting participation was expressed. The sub-underwriting interest was expressed, and the refinancing



discussions with the banks occurred prior to the recent devaluations announced by CWT on 26 November 2010 and the fall in the Unit price to a low of 13.5c on 22 October 2010.

The first example assumes CWT retains facilities with its two existing banks on terms on which they have previously indicated they would be willing to provide debt finance to CWT. It assumes the minimum pay down acceptable to one of the banks and achieving 5% asset value headroom on its second facility. Under this scenario, CWT would have only limited asset value headroom.

The second example assumes CWT has only one banking facility on the terms previously indicated by one of its current banks, and achieves asset value headroom of 20% on this facility. The Board believes that asset value headroom of 20% across its facilities is a reasonable level for CWT for the reasons set out in Section 3.5(a). The table indicates that, in this example, a Unitholder would need to subscribe for 2.8 times the number of Units they held in order to maintain their proportional Unitholding if asset value headroom of 20% were to be achieved. If the Unitholder chose not to subscribe for the additional Units, they would suffer pro forma NIV dilution of 55.8%.

The table below illustrates that a Unitholder holding 42,000 Units (being the average holding of Units excluding CLC), would need to commit \$12,300 to maintain their proportional ownership interest under the second example. Under the Proposal, the same Unitholder would receive \$10,080 in Scheme Consideration.

#### Target asset value headroom<sup>4</sup> (weighted average)

	8%	20%
Equity raising size	\$44.3m	\$55.9m
Offer ratio	2.2 for 1	2.8 for 1
TERP <sup>5</sup>	\$0.122	\$0.119
Amount raised as % of market capitalisation	122.3%	154.3%
CWT average unitholding (Units) <sup>6</sup>	42,000	42,000
Units required to maintain proportional ownership	93,000	117,100
Capital commitment required by an 'average' unitholder	\$9,800	\$12,300
NIV	\$120.7m	\$131.7m
Units on issue	613.1m	723.5m
NIV/Unit	\$0.197	\$0.182
NIV/Unit dilution <sup>7</sup>	52.2%	55.8%

#### (c) Retention of distributions

CWT could retain future distributions to pay-down the banks over time as it did in June 2010. However, as a guide, CWT's net cash flow from operating activities for the year to 30 June 2010 was \$16.1 million – significantly less than CWT requires. The retention of taxable income derived from this cash flow may also have adverse tax implications for some Unitholders.

#### (d) Targeted asset sales with proceeds used to reduce portfolio gearing

A partial sell down of the portfolio is another option which has been pursued to reduce gearing. The current market conditions are not conducive to selling CWT's larger properties.

As set out above, CWT has attempted sales but achieved only small property sales in recent times. In addition, since announcing that the Board was reviewing capital management alternatives in June 2010, CWT has not received any approaches by parties interested in buying CWT's larger properties.

<sup>4</sup> Asset value headroom measures the percentage fall in asset valuations required before banking covenants are breached

<sup>5</sup> Theoretical ex rights price based on the 5-day VWAP up to and including 1 November 2010

<sup>6</sup> Excluding units held by CLC

<sup>7</sup> Dilution versus Pro Forma NIV per unit

**(e) An orderly wind up**

The Board has considered the possibility of returning funds to Unitholders through a wind up in an orderly process over the medium term. This option would involve the sale of the underlying properties over time, the repayment of outstanding debt and the distribution of any surplus proceeds post transaction costs to Unitholders.

As set out above, the current market conditions are not conducive to undertaking significant sales and, in addition, the market may view CWT as a forced seller, restricting CWT's ability to achieve reasonable prices.

This approach would also require the co-operation of CWT's banks, as sales may not deliver the required reduction in gearing by the refinancing dates and could result in covenant breaches.

Given the execution and timing risks involved and the potential valuations that could be achieved, the Independent Directors do not believe an orderly wind up to be a superior alternative to the Proposal.

**REFER TO SECTION 3.5 FOR FURTHER DETAILS  
IN RELATION TO THE CAPITAL MANAGEMENT  
ALTERNATIVES CONSIDERED BY THE BOARD.**

# Key dates

Date	Event
3.00 pm, 29 January 2011	<b>Last date and time by which proxy forms for the Meeting must be received by the Registry</b>
3.00 pm, 29 January 2011	<b>Date and time for determining eligibility to vote at the Meeting</b>
3.00 pm, 31 January 2011	<b>Meeting</b>

## If the Resolutions are approved at the Meeting:

31 January 2011	<b>Effective Date</b> – Assuming that the Supplemental Deed is lodged with ASIC on the date of the Meeting
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## If the Resolutions are approved at the Meeting and all of the Conditions are satisfied or (where applicable) waived:

The date of the Condition Satisfaction Date	<b>Trading Cessation Date</b> – Cessation of trading in Units at the close of trading on ASX
5 Business Days after the Condition Satisfaction Date	<b>Record Date</b> – All Scheme Participants who hold Units on the Record Date will be entitled to receive the Scheme Consideration
2 Business Days after the Record Date	<b>Implementation Date</b> – This is the date that the Scheme Units will be acquired by CKLS. Scheme Participants will be sent the Scheme Consideration to which they are entitled within three Business Days after this date

One of the Conditions to the Scheme being implemented is that the OIO Approval is obtained from the New Zealand Overseas Investment Office. The application for the OIO Approval was submitted by CKLS on 23 November 2010. In a recent speech<sup>8</sup>, the Prime Minister of New Zealand stated that the average time for processing an application had dropped to 42 days. However, there is a risk that the OIO Approval will not be obtained within that time period, by the date of the Meeting or at all. **If the OIO Approval is obtained after the date of the Meeting, there will be a delay in the Scheme being implemented and therefore the Scheme Consideration being paid to Scheme Participants.** If the OIO Approval is not obtained, CLIL and CKLS will not be obliged to proceed with the Scheme and either CKLS or CLIL may terminate the Scheme Implementation Agreement.

All dates are subject to change and, if applicable, ASX approval, and the satisfaction or, where applicable, waiver of the conditions to the implementation of the Proposal (see Section 6.14).

Any changes to the above timetable will be announced to ASX and notified on CWT's website at [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt).

Unless otherwise stated, all references to time in this Explanatory Memorandum are references to Australian Eastern Daylight Time, being the time in Sydney, Australia.

<sup>8</sup> Made to the New Zealand Federated Farmers National Council on 17 November 2010

# 1. What you should do

- Carefully read this Explanatory Memorandum in its entirety before making a decision as to how to vote on the Resolutions.
- Consult your legal, investment, taxation or other professional adviser and obtain independent advice before making any investment decision in relation to your Units and how to vote on the Resolutions.
- Vote on the Resolutions. The Notice of Meeting set out in Attachment A provides information on how you may vote, either in person or by proxy, on the Resolutions.

## 1.1 Voting options

### Entitlement to vote

If you are registered on the Register as a Unitholder at 3.00 pm on 29 January 2011, then you will be entitled to attend and vote at the Meeting, unless otherwise noted in the Notice of Meeting.

The details of the Meeting are as follows:

**Location** The Lyceum Room in the Wesley Centre, 220 Pitt Street, Sydney NSW 2000

**Date** Monday, 31 January 2011

**Time** 3.00 pm

A copy of the Notice of Meeting is set out in Attachment A.

### Voting

If you wish to vote in person, you must attend the Meeting. If you cannot attend the Meeting, you may vote by proxy, attorney or, if you are a body corporate, by appointing a corporate representative.

If you wish to appoint a proxy to attend and vote at the Meeting on your behalf, please complete and sign the proxy form for the Meeting accompanying this Explanatory Memorandum in accordance with the instructions set out on the proxy form.

**TO BE VALID, YOUR PROXY FORMS MUST BE RECEIVED BY THE REGISTRY BY NO LATER THAN 3.00 pm ON 29 JANUARY 2011.**

### To vote in favour of the Scheme

This is the course of action unanimously recommended by the Independent Directors, in the absence of a superior proposal. The reasons for the Independent Directors' unanimous recommendation are set out in the 'Reasons to vote for the Proposal' section at the front of this Explanatory Memorandum.

For the Proposal to be approved, each of the Resolutions must be passed by the requisite majorities at the Meeting. See Section 4.2.

For this reason, the Independent Directors unanimously recommend that you vote in favour of each of the Resolutions, in the absence of a superior proposal. If you are unable to attend the Meeting, the Independent Directors urge you to complete and return, in the enclosed reply paid envelope, the proxy form accompanying this Explanatory Memorandum.

### To vote against the Scheme

If, despite the Independent Directors' unanimous recommendation and the conclusion of the Independent Expert, you do not support the Proposal, you may vote against the Resolutions at the Meeting. See Section 3.7 for further details on what will happen if the Proposal is not approved.

However, if the Scheme is approved by the requisite majorities at the Meeting and all of the conditions to the Scheme are satisfied or (where applicable) waived, the Scheme will bind all Scheme Participants, including those who vote against the Resolutions and those who do not vote at all. In these circumstances, all Scheme Units that you hold as at the Record Date will be transferred to CKLS and you will receive the Scheme Consideration.

## 1.2 Sell your Units

The Proposal does not preclude you from selling your Units on ASX, if you wish, on or before the Trading Cessation Date.

If you are considering selling your Units, you should have regard to the prevailing trading prices of Units on ASX and compare those to the Scheme Consideration being offered under the Proposal. You may ascertain current trading prices of Units on ASX through the ASX website [asx.com.au](http://asx.com.au), or by contacting your stockbroker.

Unitholders who sell their Units on ASX:

- will receive the consideration for sale of their Units sooner than they would receive the Scheme Consideration under the Proposal;
- may incur a brokerage charge; and
- will not be able to participate in the Scheme.

## 1.3 Do nothing – neither vote in favour of nor against the Resolutions nor sell your Units

Unitholders who do not elect to vote at the Meeting or sell their Units will:

- if the Scheme is implemented – have their Scheme Units transferred to CKLS by operation of the Scheme and receive payment of \$0.24 cash per Scheme Unit; or
- if the Scheme is not implemented – retain their Units. See Section 3.7 for further details on what will happen if the Proposal is not approved.

## 2. Frequently asked questions

### 2.1 Why have I received this Explanatory Memorandum?

This Explanatory Memorandum has been sent to you because you are a Unitholder and Unitholders are being asked to vote on the Proposal which, if approved and implemented, will result in CKLS owning all of the Units in CWT that are not held by or on behalf of the CLC Group and the Scheme Participants receiving \$0.24 cash per Scheme Unit.

You should carefully read the Explanatory Memorandum in full and, if necessary, consult your legal, investment, taxation or other professional adviser before voting on the Resolutions.

### 2.2 What is the Proposal?

On 8 November 2010, CWT announced the Proposal to ASX. The Proposal involves the Scheme Units, being all of the Units on issue in CWT that are not held by or on behalf of the CLC Group, being acquired by CKLS at \$0.24 per Scheme Unit.

If implemented, the Proposal will be effected by way of a trust scheme and Scheme Participants will receive a payment of \$0.24 cash for each Scheme Unit they hold on the Record Date.

CWT will subsequently be delisted from ASX.

### 2.3 What are my options?

If you are a Unitholder, your options are to:

- (a) vote in favour of the Resolutions at the Meeting (this being the course of action unanimously recommended by the Independent Directors, in the absence of a superior proposal);
- (b) vote against the Resolutions at the Meeting. See Section 3.7 for details on what will happen if the Proposal is not approved;
- (c) if you cannot attend the Meeting, appoint a proxy or attorney (or for a body corporate, a corporate representative) to attend the Meeting and vote on your behalf;
- (d) sell your Units on ASX prior to the Trading Cessation Date; or
- (e) do nothing – i.e. neither vote in favour of or against the Resolutions nor sell your Units.

If the Scheme is approved by the requisite majorities at the Meeting and all of the conditions to the Scheme are satisfied or (where applicable) waived, the Scheme will bind all Scheme Participants, including those who vote against the Resolutions and those who do not vote at all. In these circumstances, all Scheme Units that you hold as at the Record Date will be transferred to CKLS and you will receive the Scheme Consideration.

### 2.4 What will I receive for my Units?

If the Scheme is implemented, each Scheme Participant will receive the Scheme Consideration of \$0.24 cash for each Scheme Unit they hold on the Record Date without any brokerage charges.

### 2.5 When will I receive the Scheme Consideration?

Provided the Scheme becomes Effective, Scheme Participants will be sent the Scheme Consideration within three Business Days of the Implementation Date.

One of the Conditions to the Scheme being implemented is that the OIO Approval is obtained from the New Zealand Overseas Investment Office. The application for the OIO Approval was submitted by CKLS on 23 November 2010. In a recent speech<sup>9</sup>, the Prime Minister of New Zealand stated that the average time for processing an application had dropped to 42 days.

<sup>9</sup> Made to the Federated Farmers National Council on 17 November 2010

However, there is a risk that the OIO Approval will not be obtained within that time period, by the date of the Meeting or at all. **If the OIO Approval is obtained after the date of the Meeting, there will be a delay in the Scheme being implemented and therefore the Scheme Consideration being paid to Scheme Participants.** If the OIO Approval is not obtained, CLIL and CKLS will not be obliged to proceed with the Scheme and either CKLS or CLIL may terminate the Scheme Implementation Agreement.

## 2.6 Will I receive a distribution for the period ending 31 December 2010?

It is a condition of the Proposal that no distribution will be paid for the period ending 31 December 2010 or otherwise.

In the absence of the Proposal, the Board's intention would be to use any distribution for the period ending 31 December 2010 to repay debt.

## 2.7 What are the reasons to vote for the Proposal?

The Independent Directors unanimously recommend that Unitholders vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

Possible reasons to vote in favour of the Proposal include the following:

- the Scheme Consideration represents a substantial premium to the pre-announcement trading price of Units;
- the outlook for the wine industries and vineyard sectors in Australia and New Zealand is uncertain;
- the consequences if the Proposal does not proceed which are described in Section 3.7;
- the ability of Unitholders to receive certainty of value through cash consideration under the Scheme;
- the uncertain prospects for CWT in the absence of a capital raising, given the challenges it faces including ongoing industry over-supply of wine grapes, strong domestic currencies in Australia and New Zealand, falling vineyard property values, and tighter gearing banking covenants;

- the Board has undertaken a detailed review of the capital management alternatives available to CWT to address the challenges currently faced by CWT. The Independent Directors have concluded that the Proposal is the best option available to Unitholders given the potential value and risks involved in the other alternatives;
- the conclusions of the Independent Expert;
- no superior proposal has emerged; and
- no brokerage or stamp duty on the transfer of Units pursuant to the Scheme is payable by Scheme Participants.

Each of these is discussed in detail in the 'Reasons to vote for the Proposal' section at the front of this Explanatory Memorandum.

## 2.8 What are the reasons to consider voting against the Proposal?

Although the Independent Directors unanimously recommend that you vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal, factors which may lead you to vote against the Proposal include the following:

- disagreement regarding the relative merits of the capital management alternatives available to CWT;
- the desire to maintain an interest in a publicly listed entity with the specific characteristics of CWT such as operational profile, capital structure, size and geography;
- disagreement regarding the consequences if the Proposal does not proceed, particularly in relation to the ability of CWT to raise sufficient capital to meet its re-financing obligations in May 2011 and reduce its gearing to a sustainable level;
- the Scheme Consideration represents a 41% discount to CWT's Pro Forma NIV of \$0.41 per Unit and you may believe that the Scheme Consideration does not reflect the realisable long-term value of CWT;
- disagreement regarding the likelihood of CWT finding a solution to its re-financing and gearing issues, coupled with the view that the Proposal involves you selling your Units at a time when the wine industry is at or near the bottom of a cycle, therefore eliminating



the possibility of you participating in any future capital appreciation in the value of CWT's property portfolio and Units should market conditions improve;

- the Independent Expert has concluded that the Scheme Consideration is not fair;
- expectation of a superior proposal; and
- the Proposal may trigger taxation consequences for Unitholders earlier than might otherwise have been the case.

Each of these is discussed in detail in the 'Reasons to vote against the Proposal' section at the front of this Explanatory Memorandum.

## 2.9 What capital management alternatives has the Board considered?

Over the course of several months the Board has undertaken a detailed review of the capital management alternatives available to CWT. In assessing these alternatives, the Board has considered the extent to which a given option would address the issues facing CWT, the potential value outcome for Unitholders, and the risks involved in pursuing each of those options. The options considered by the Board (either as stand-alone or in combination) include:

- recapitalising through an underwritten rights issue;
- retention of distributions;
- targeted asset sales; and
- an orderly wind up.

Each option is considered in detail in Section 3.5.

## 2.10 Do the Independent Directors recommend the Proposal?

The Independent Directors unanimously recommend that you vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

The reasons for the Independent Directors' unanimous recommendation are set out in detail in the 'Reasons to vote for the Proposal' section at the front of this Explanatory Memorandum.

## 2.11 Why is the recommendation being made by the Independent Directors?

Mr Rob Woods and Mr Brendan O'Connor are senior executives of the Challenger Group and remunerated by the Challenger Group. CLC is a subsidiary of Challenger.

The CLC Group will continue to hold 27.7% of the Units in CWT after the Scheme is implemented and is party to arrangements (including the Securityholders Deed) which regulate its relationship with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme.

Given their positions as employees of the Challenger Group each of Mr Woods and Mr O'Connor does not consider himself justified in making a recommendation in respect of the Proposal and accordingly each of them makes no such recommendation.

The Independent Directors are Brenda Shanahan, Michael Cole, Ian Martens, Ian Moore and Geoff McWilliam. The Independent Directors are all independent of the Challenger Group, the CLC Group and the CKLS Group in accordance with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (2nd Edition).

## 2.12 What is the relationship between CLIL, CLC and CMSL?

CLIL is the responsible entity of CWT.

CMSL is responsible for providing management services to CWT.

CLC is an Australian life insurance company. CLC's subsidiary, CLC Sub, will continue to hold 27.7% of the Units in CWT after the Scheme is implemented and is party to the Securityholders Deed which regulates the relationship of the CLC Group with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme.

Each of CLIL, CMSL and CLC are wholly-owned subsidiaries of Challenger, an investment management firm that is listed on the Australian Securities Exchange and is a member of the S&P/ASX 100 index.

A summary of the governance protocols that were put in place by the Board to address any actual or perceived conflict of interest that may potentially arise in relation to the Proposal are set out in Section 4.1.

### 2.13 Who is CK Life Sciences Int'l., Inc.?

CKLS is a wholly owned subsidiary of CKLS Holdings, a company listed on the Stock Exchange of Hong Kong (stock code: 775).

CKLS Group is engaged in the research and development, commercialisation, marketing and sale of health and agriculture-related products and owns a number of agriculture-related businesses in Australia.

Following a number of acquisitions in the last few years, CKLS Group has built up a portfolio of businesses in Australia that span a range of agriculture-related and health supplement and complementary medicine industries.

In accordance with the terms of the Scheme Implementation Agreement, CKLS has elected to proceed with the acquisition of Scheme Units through the CKLS Nominee, which is a wholly owned subsidiary of CKLS's parent company, CKLS Holdings. The CKLS Nominee has been established to facilitate the investment in the Scheme Units in a special purpose company, dedicated to this particular investment, consistent with the CKLS Group's overall corporate planning in relation to this investment.

CKLS Holdings has guaranteed the obligations of CKLS and the CKLS Nominee under the Scheme Implementation Agreement, the Deed Poll and the Transitional Arrangements Deed.

Further information on CKLS and CKLS Holdings is set out in Section 5.

### 2.14 What is CKLS's rationale for the proposed acquisition of CWT?

One of the strategies of CKLS is to invest in agriculture-related assets with potential to provide satisfactory returns for well-capitalised and patient investors over the long term.

During the past few years, CKLS has built up a portfolio of profitable businesses in Australia. Following the acquisition of Envirogreen from Brambles and CSR, and Nuturf from Nufarm, the Amgrow brand is now the second largest in the home garden market. With the 2007 acquisition of Lipa Pharmaceuticals Limited and the 2008 acquisition of Accensi Pty Ltd, CKLS is now Australia's largest contract manufacturer of complementary healthcare medicines and largest independent toll manufacturer of crop protection products.

The Australian and New Zealand vineyard industry, although currently experiencing significant adverse conditions, does fall within and satisfy CKLS's long term investment criteria. CKLS believes the acquisition would further strengthen CKLS's agriculture businesses, and will provide CKLS access to vineyard assets on a scale sufficiently meaningful to be attractive to CKLS.

Further information on CKLS is set out in Section 5.

### 2.15 Why is CLC retaining its Units in CWT?

While CKLS's intention is to acquire a controlling interest in CWT, CKLS's proposal was made on the basis that CLC retains its minority 27.7% holding as the only other Unitholder in CWT, so that CKLS would retain another substantive Australian-based entity alongside it as Unitholder to confront the current difficult environment for CWT, going forward. Following extensive negotiations, CLC agreed to support this proposal.

This resulted in CLC entering into the Securityholders Deed with CKLS which regulates the relationship of the CLC Group with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme. A copy of the Securityholders Deed was attached to CKLS' Substantial Holder notice provided to ASX on 8 November 2010. The Securityholders Deed was negotiated and settled between CKLS and CLC on an arm's length basis.

If the Scheme is implemented, CKLS and CLC will need to address the issues faced by CWT. In particular, CKLS and CLC have agreed to work together towards refinancing CWT's banking facilities and achieving a sustainable capital structure. The first of CWT's banking facilities matures in May 2011 and has an outstanding balance of \$64 million (including interest rate swaps).

## 2.16 Has CKLS or its associates given CLC or its associates any collateral benefits in connection with the Proposal?

As disclosed in Section 5 (and in particular Section 5.5):

- CLC Sub will continue as Unitholder in CWT with CKLS if the proposal is implemented and is party to a Securityholders Deed with CKLS which regulates the relationship of the CLC Group with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme;
- CMSL is party to a management deed with the New Trustee pursuant to which CMSL is appointed as manager of CWT, subject to and with effect from the appointment of the New Trustee as trustee of CWT; and
- CLC Sub is a party to the Transitional Arrangements Deed.

All of these arrangements have been negotiated on an arm's length basis.

Other than as disclosed above (if and to the extent any of the matters disclosed constitutes a benefit to CLC or its associates), CKLS or its associates have not given CLC or its associates any collateral benefits in connection with the Proposal.

## 2.17 What happens if a superior proposal emerges?

Since the Proposal was announced on 8 November 2010, no superior proposal has emerged. Under the Scheme Implementation Agreement, CLIL cannot directly or indirectly solicit, invite or initiate competing proposals until the earlier of the Implementation Date, the End Date or the termination of the Scheme Implementation Agreement.

However, if an alternative proposal is made to CLIL involving CWT, the Independent Directors will review that proposal to determine if it represents a superior proposal to Unitholders and advise you of their recommendation.

In the event of a superior proposal being announced and completed within a certain period of time, CLIL will be obliged to reimburse CKLS for its actual external

costs incurred up to a maximum amount of \$330,000 (plus GST). For more details on these arrangements, see Sections 2.32 and 2.33.

## 2.18 What does the Independent Expert say?

In summary, the Independent Expert has concluded as follows:

*Fairness and reasonableness opinion - the Proposal is, on balance, not fair but reasonable to Unitholders not associated with CKLS.*

*Best interests opinion - the Proposal is also in the best interests of Unitholders not associated with CKLS.*

A complete copy of the Independent Expert's Report is contained in Attachment E.

## 2.19 Why has the Independent Expert concluded that the Proposal is not fair but reasonable and in the best interests of Non-Associated Unitholders?

The Independent Expert has concluded that the Proposal is not fair based on the Independent Expert's estimated Unit market value of \$0.41 (on a control basis) being more than the value of the Scheme Consideration of \$0.24 cash per Scheme Unit.

Having regard to a number of other considerations which are described in further detail in Item 5 of the 'Reasons to vote for the Proposal', the Independent Expert concluded that the Proposal was both reasonable and in the best interests of Non-Associated Unitholders.

A detailed description of the Independent Expert's findings are described in Item 5 of the 'Reasons to vote for the Proposal' and a copy of the Independent Expert's Report is set out in Attachment E.

## 2.20 Who is entitled to participate in the Proposal?

Unitholders on the Register on the Record Date may participate in the Proposal and will be bound by the Scheme if it is implemented.

### 2.21 When and where will the Meeting be held?

The Meeting will be held at 3.00 pm on Monday 31 January 2011 in the Lyceum Room in the Wesley Centre, 220 Pitt Street, Sydney.

### 2.22 What am I being asked to vote on?

In order for the Proposal to be implemented, each of the Resolutions must be approved by the requisite majorities at the Meeting.

Details of the Resolutions are explained in Section 4.2 and are set out in full in the Notice of Meeting in Attachment A.

### 2.23 What voting majority is required to approve the Scheme?

The majority required to approve the Scheme depends on the particular Resolution being considered. There are three resolutions required in order to approve the Scheme:

- (a) the Approval Resolution must be approved by at least 50% of the total number of votes cast by Unitholders entitled to vote on that resolution (in person, by proxy, by attorney or, in the case of a body corporate, by a corporate representative);
- (b) the Amendment Resolution must be approved by at least 75% of the total number of votes cast by Unitholders entitled to vote on that resolution (in person, by proxy, by attorney or, in the case of a body corporate, by a corporate representative); and
- (c) the Securityholders Deed Resolution must be approved by at least 50% of the total number of votes cast by Unitholders entitled to vote on that resolution (in person, by proxy, by attorney or, in the case of a body corporate, by a corporate representative).

In order for the Proposal to be implemented, each of the Resolutions must be approved by the requisite majorities of Unitholders.

### 2.24 Am I entitled to vote?

If you are registered as a Unitholder at 3.00 pm on 29 January 2011, you will be entitled to attend the Meeting and vote on the Resolutions (in person, by proxy, by attorney or, in the case of a body corporate, by a

corporate representative), unless otherwise noted in the Notice of Meeting (see Attachment A).

### 2.25 Who is excluded from voting?

Voting exclusions in respect of each resolution depend on the particular resolution being considered:

- (a) **Approval Resolution:** Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast by CKLS and its associates (unless the associate is a custodian, nominee, trustee, responsible entity or other fiduciary which has received a specific instruction from a third party beneficiary, who is not an associate of CKLS, directing the associate how to vote) in favour of the Approval Resolution. Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on the Approval Resolution.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on the Approval Resolution if they have an interest in the resolution other than as a member;

- (b) **Amendment Resolution:** Pursuant to Guidance Note 15, votes cast by CKLS and its associates and CLIL and its associates on the Amendment Resolution will be disregarded. Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on the Amendment Resolution.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on the Amendment Resolution if they have an interest in the resolution other than as a member; and

- (c) **Securityholders Deed Resolution:** Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast by CKLS and its associates or CLC and its associates (which includes the Challenger Group) in favour of the Securityholders Deed Resolution.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are also not entitled to vote on the Securityholders Deed Resolution if they have an interest in the resolution other than as a member.

## 2.26 Is voting compulsory?

No. However, if you do not vote, either in person or by proxy, and the Resolutions are approved by the requisite majorities at the Meeting and all conditions of the Scheme are satisfied or (where applicable) waived, the Scheme will still be binding upon you, your Scheme Units will be transferred to CKLS and you will receive the Scheme Consideration.

Your vote is important and is your opportunity to have your say on the success or failure of the Proposal.

## 2.27 What if I cannot or do not wish to attend the Meeting?

If you cannot or do not wish to attend the Meeting, you may appoint a proxy or attorney (or for a body corporate, a corporate representative) to vote at the Meeting on your behalf.

Full details of how these appointments may be made are contained in the Notice of Meeting which is set out in Attachment A. Proxy forms accompany this Explanatory Memorandum.

## 2.28 What happens if I vote against the Scheme?

If each of the Resolutions are approved by the requisite majorities at the Meeting and all conditions of the Scheme are satisfied or (where applicable) waived, the Scheme will bind all Scheme Participants, including those who vote against the Resolutions and those who do not vote at all. In these circumstances, all Scheme Units that you hold as at the Record Date will be transferred to CKLS and you will receive the Scheme Consideration.

## 2.29 Are there any conditions that must be satisfied in order for the Proposal to be implemented?

Yes, there are. In particular, the Scheme is conditional on:

- (a) the Resolutions being passed by the requisite majorities of Unitholders (see Section 4.2);
- (b) CKLS obtaining the OIO Approval which is subject only to customary conditions of the New Zealand Overseas Investment Office or conditions that CKLS has agreed to in its application;

- (c) before midnight on the date of the Meeting, there being no material adverse change of an ongoing nature to the business, financial position or results of operations or financial performance of CWT from the business, financial position or results of operations or financial performance of CWT existing at the date of the Scheme Implementation Agreement;
- (d) no natural disaster occurring after midnight on the date of the Meeting and before 31 March 2011 which would result in the total payments received under all leases for the ensuing three years to be reduced by more than 25% of what the rental would have been had the natural disaster not occurred; and
- (e) no Prescribed Occurrence occurring before 8.00 am on the date of the Meeting.

The full list of conditions contained within the Scheme Implementation Agreement are summarised in Section 6.14 and the Scheme Implementation Agreement is set out in full in Attachment C.

If the Resolutions are passed by the requisite majorities of Unitholders, the only conditions in the Scheme Implementation Agreement which may be outstanding following the Meeting is the grant of OIO Approval and the no natural disasters condition. All other conditions must have been satisfied or waived by the time of the Meeting.

The OIO Approval is required because on implementation of the Proposal CKLS will acquire more than 25% of the Units of CWT, and CWT owns properties in New Zealand which fall within a prescribed class of property under the *Overseas Investment Act 2005* (New Zealand).

The application for the OIO Approval was submitted by CKLS on 23 November 2010. In a recent speech<sup>10</sup>, the Prime Minister of New Zealand stated that the average time for processing an application had dropped to 42 days. However, there is a risk that the OIO Approval will not be obtained within that time period, by the date of the Meeting or at all. **If the OIO Approval is obtained after the date of the Meeting, there will be a delay in the Scheme being implemented and therefore the Scheme Consideration being paid to Scheme Participants.**

As at the date of this Explanatory Memorandum, the Directors are not aware of any reason why the Conditions to the Scheme should not be satisfied.

<sup>10</sup> Made to the Federated Farmers National Council on 17 November 2010



Unitholders should also be aware that the Scheme Implementation Agreement may be terminated in certain circumstances. Full details of the termination rights under the Scheme Implementation Agreement are set out in clause 11 of the Scheme Implementation Agreement (which is set out in full in Attachment C). If the Scheme Implementation Agreement is terminated, the Proposal will not proceed, and the Scheme Units will not be transferred to CKLS and you will not receive the Scheme Consideration.

### 2.30 What happens if the Proposal is not approved or the conditions to the Proposal are not satisfied?

If the Proposal is not approved or the conditions of the Proposal are not satisfied or (where applicable) waived, the Proposal will not proceed, and the Scheme Units will not be transferred to CKLS at \$0.24 per Scheme Unit and you will not receive the Scheme Consideration.

In the event the Proposal does not proceed, CWT will remain listed on ASX and the Board believes it will need to attempt an underwritten rights issue to lower CWT's gearing significantly. The Board considers that an underwritten rights issue would:

- (a) be at a significant discount to the Scheme Consideration and a discount to the trading price of the Units before the Proposal was announced;
- (b) require existing Unitholders to commit substantial additional capital relative to their existing holding if they wished to maintain their proportional ownership interest in CWT; and
- (c) be dilutive to NIV, earnings and distributions per Unit.

Section 3.5 sets out a table providing two illustrative examples of underwritten rights issues based on a number of assumptions.

In order to achieve a reasonable level of gearing the illustration indicates that, based on the assumptions as outlined, the underwritten rights issue would:

- (a) require existing Unitholders to subscribe for approximately 2.8 new Units for each Unit that they hold if they wished to maintain their proportional ownership interest in CWT; and
- (b) dilute NIV per Unit to approximately \$0.18.

The Board also believes that the Unit price may fall and trade at materially less than the Scheme Consideration, as was the case prior to the Proposal being announced.

### 2.31 What fees are payable by CWT in relation to the management of CWT?

CMSL was appointed on 1 January 2006 as manager of CWT and the CWT Subtrusts pursuant to the Management Agreement. As the Management Agreement was due to expire on 1 January 2011, CLIL agreed on 16 December 2010 to extend the Management Agreement on the same terms. The Management Agreement continues to be able to be terminated by either CMSL or CLIL giving the other party 12 months notice.

Under the Trust Constitution and the Management Agreement, certain fees are payable to CMSL in relation to the ongoing management of CWT, as follows:

Fee description	Fee	Basis
Base fee	$\frac{1}{12} \times 0.65\%$ plus $\frac{1}{12} \times 0.45\%$	Of monthly consolidated total assets up to and including \$1,000,000,000 Of monthly consolidated total assets in excess of \$1,000,000,000
Management fee	1.00%	Of monthly consolidated total gross rent, interest, dividends and realised gains from derivative hedging transactions
Acquisition and development fee	1.50%	Of GST exclusive purchase price or development cost of any property or other asset acquired or developed

A copy of the Trust Constitution and Management Agreement (with the amending agreement) can be found on the Challenger website at [www.challenger.com.au/listed/cwt/CorporateGovernance.asp](http://www.challenger.com.au/listed/cwt/CorporateGovernance.asp)

### 2.32 Has CLIL agreed to pay a break fee to CKLS in certain circumstances where the Proposal does not proceed?

CLIL has agreed to reimburse CKLS for its actual external costs incurred in relation to the Proposal (subject to a cap of \$330,000 plus GST if applicable) if at any time before the date of the Meeting any of the following occurs and CKLS does not proceed to acquire all of the Scheme Units by 30 June 2011:

- (a) a superior proposal is announced or open for acceptance and, whether before or within three months after 30 June 2011, that superior proposal is completed substantially in accordance with its terms; or
- (b) the Independent Directors fail to make, or withdraw, a recommendation to Unitholders vote in favour of the Scheme Resolutions other than in circumstances where the Independent Expert has concluded that the Scheme is not in the best interests of Unitholders.

### 2.33 Does the Scheme Implementation Agreement contain any exclusivity provisions?

While CLIL has agreed in the Scheme Implementation Agreement to not, during the exclusivity period, directly or indirectly solicit, invite or initiate competing proposals, CWT is able to respond to a competing proposal which it receives from a third party.

CWT may give due diligence to a superior competing proposal. However, CWT has agreed in the Scheme Implementation Agreement to promptly notify CKLS if it receives a competing proposal that it determines to be a superior proposal.

Full details of the exclusivity provisions in the Scheme Implementation Agreement are set out in clause 15 of the Scheme Implementation Agreement which is set out in full in Attachment C.

### 2.34 Will I be taxed on the Scheme Consideration?

Unitholders may be taxed on gains they make as a result of the disposal of the Scheme Units. Generally, for Unitholders who hold their Scheme Units on capital account, the disposal will trigger an Australian capital gains tax event and Unitholders will make a capital gain to the extent that the Scheme Consideration is more than the Unitholder's cost base (adjusted as applicable) in the Scheme Units or Unitholders will make a capital loss to the extent that the Scheme Consideration is less than the Unitholder's cost base (adjusted as applicable) in the Scheme Units.

Certain Unitholders may be entitled to discounted capital gains tax treatment. General information about some of the Australian tax consequences for Unitholders is set out in Attachment F.

All Unitholders should seek their own independent advice on the taxation implications of the Proposal having regard to their individual circumstances.

### 2.35 How do I obtain further information?

If you have any questions about the Proposal or the Scheme, please contact the Unitholder Information Line 1800 830 977 OR +61 2 8280 7492 (outside Australia).

If you have a question about CWT (other than in relation to the Proposal or to the Scheme), please contact the CWT registry line on 1800 830 977 OR +61 2 8280 7492 (outside Australia).

For information about your individual financial or taxation circumstances, please consult your investment, legal, taxation or other professional adviser.



# 3. Information regarding CWT

## 3.1 Overview of CWT

CWT is an externally managed ASX listed property trust offering capital solutions to the Australian and New Zealand wine industry. CWT's strategy is to invest in well located vineyards tenanted by established large scale wine industry operators.

### (a) Background

CWT was established in February 1998 and subsequently listed on the ASX on 2 July 1999. CWT's responsible entity is CLIL, previously named Beston Pacific Corporation Limited.

CWT's investment strategy has remained constant since inception, with the exception of CWT's efforts to exit the business of grape crush processing and storage. CWT last

acquired vineyards in September 2007 and more recently has sold smaller less strategic properties to reduce gearing.

### (b) CWT's portfolio

CWT's current property portfolio consists of 21 vineyards (including two wineries) in key vineyard regions of Australia and New Zealand.

Although the portfolio has 99% occupancy and relatively stable income, property values have decreased in recent times as a result of deteriorating market conditions in the Australian and New Zealand wine industries and vineyard sectors. Since 30 June 2008 the value of CWT's current property portfolio has fallen \$74 million from \$286 million to \$212 million on a pro forma basis, representing a 26% fall.

### Current portfolio metrics

Property	Geographic Indicator	WALE (years) <sup>7</sup>	Valuation Date <sup>5</sup>	Fair value (\$m) <sup>6</sup>	Passing yield (%)
Balrarnald Vineyard	Riverina, NSW	6.1	Dec-10	21.8	14.3%
Chapel Vineyard	Coonawarra, SA	0.7	Dec-10	0.8	1.6%
Cocoparra and Woods Vineyards <sup>4</sup>	Riverina, NSW	2.5	Dec-10	10.0	11.6%
Corryton Park Vineyard	Eden Valley, SA	2.3	Jun-10	2.5	12.5%
Del Rios Vineyard	Sunraysia, VIC	5.7	Dec-10	43.0	15.8%
Hermitage Road Winery	Hunter Valley, NSW	1.9	Jun-10	1.5	15.2%
Miamba Vineyards	Barossa Valley, SA	4.8	Dec-10	10.1	12.8%
Poole's Rock Vineyard & Winery <sup>2</sup>	Hunter Valley, NSW	4.1	Dec-10	5.0	17.2%
Qualco East Vineyard	Riverland, SA	5.1	Jun-10	6.5	15.6%
Richmond Grove and Lawsons Vineyards	Padthaway, SA	2.7	Dec-10	26.1	18.6%
Schuberts Vineyard	Adelaide Hills, SA	0.7	Dec-10	5.4	13.1%
Sirens Vineyard	Margaret River, WA	1.6	Jun-10	2.1	14.8%
Stephendale Vineyard	Riverina, NSW	6.9	Dec-10	22.8	12.0%
Summers Vineyard	Eden Valley, SA	2.3	Jun-10	1.2	12.0%
Waikerie Vineyard	Riverland, SA	2.5	Dec-10	1.2	20.7%
Whitton Vineyard	Riverina, NSW	4.5	Jun-10	4.2	10.4%
Crownthorpe Vineyard <sup>1</sup>	Hawkes Bay, NZ	0.4	Dec-10	13.3	16.8%
Dashwood Vineyard <sup>1</sup>	Marlborough, NZ	2.0	Dec-10	17.0	9.9%
Gimblett Gravels Vineyards <sup>1</sup>	Hawkes Bay, NZ	0.4	Dec-10	3.5	16.9%
Rarangi Vineyard <sup>1</sup>	Marlborough, NZ	3.9	Dec-10	13.3	9.7%
Gundagai Water <sup>3</sup>	Gundagai, NSW	0.0	Jun-10	1.4	N/A
<b>Portfolio total/average</b>		<b>4.0</b>		<b>212.4</b>	<b>14.1%</b>

<sup>1</sup> NZ properties have been translated using the 31 October 2010 NZD/AUD rate of 1.2816

<sup>2</sup> Poole's Rock Vineyard & Winery exchanged sale contracts on 1 December 2010 and is expected to settle in December 2010

<sup>3</sup> Gundagai high security water - land component sold in September 2010

<sup>4</sup> Director valuation based on independent valuation metrics

<sup>5</sup> The independent Dec-10 valuations have an effective date of 31-Dec-10, although the site inspections and reports were completed during Nov-10. Accordingly, the independent valuers reserve the right to amend the valuations up to the effective date, being the 31-Dec-10, for example where new information becomes available.

<sup>6</sup> The total portfolio fair value does not add due to rounding differences.

<sup>7</sup> As at 31 October 2010.

As announced on 8 November 2010, further softening of valuations across a number of CWT properties was expected into FY2011. This has been realised in the most recent independent valuations undertaken for 12 properties, which include a cross section of the portfolio and represent 85% of the portfolio by value. In addition, internal valuations were undertaken for the remaining properties with reference to the independent valuers' metrics. Aside from the Cocoparra and Woods Vineyards, for which a 31 December 2010 Directors' valuation was adopted, there were no material variances from the 30 June 2010 independent valuations.

The CWT portfolio has decreased in value by \$23.2 million (including foreign currency movements) or 10% from June 2010. CWT's portfolio is now valued at \$212 million. A heads of agreement has been exchanged for the sale of Poole's Rock Vineyard and Winery and completion is expected in December 2010.

The factors leading to the further decline in the portfolio are to a great extent vineyard specific, with two properties representing approximately 50% of the decline.

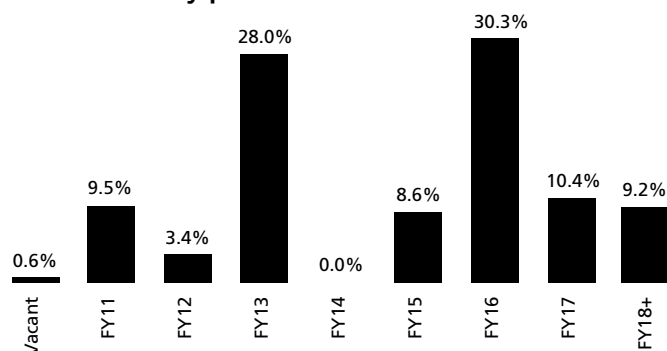
One of the properties, Richmond Grove and Lawsons, located in the Padthaway region of South Australia was impacted by the ongoing oversupply of cool climate grapes and, more importantly, the recently reported sales or pending sales by Constellation and Treasury Wine Estates in the region.

The other property, Crownthorpe Vineyard in Hawke's Bay, New Zealand, was impacted by the declining profitability of the vineyard due to lower grape prices, weaker interest in red grape producing vineyards, current market rents and the re-leasing risk when the current lease expires in April 2011.

Excluding the Richmond Grove and Lawsons property, the remainder of the Australian portfolio experienced a fall in values of 5.1% over the same period. This reflected the general weaker market for vineyards due to limited buyer interest, low grape prices and uncertainty going forward.

Excluding the Crownthorpe property, the remainder of the New Zealand portfolio has experienced a 5.5% fall in values over the same period. The smaller drop in values compared to the Crownthorpe property results from a number of factors including, different geographies, grape varieties and lease expiries.

### Lease maturity profile



The above chart illustrates CWT's lease expiry profile as a percentage of current income. The table below provides details of leases expiring during calendar year 2011. CWT is in discussions regarding lease renewals and is considering its options in the event that current tenants do not renew.

Property	Lease expiry	Annualised Rental at 30 June 2010 (\$m)	% of portfolio income
Crownthorpe Vineyard (NZ)	Apr-11	2.23	7.4%
Gimblett Gravels Vineyards (NZ)	Apr-11	0.59	2.0%
Chapel Vineyard (SA)	Jun-11	0.13	0.1%
Schuberts Vineyard (SA)	Jul-11	0.71	2.4%

### (c) NIV and gearing

At 30 June 2010, CWT's NIV was \$0.49 per Unit. CWT's Pro Forma NIV is \$0.41 per Unit. Pro Forma NIV is calculated as the audited net asset value plus the fair value increment of water rights as at 30 June 2010, adjusted for changes in property valuations, currency movements at a foreign exchange rate of AUD/NZD1.2816, fair value movements on interest swaps, and operating cash flow to 31 October 2010.

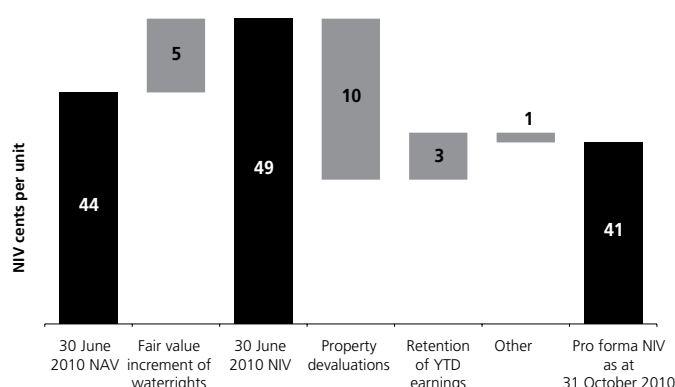
For statutory reporting purposes, water rights are classified as intangible assets and held at cost (an accounting standard requirement), which form part of the Net Asset Value (NAV). The fair value increment of water rights is added to NAV to determine the Net Independent Value (NIV) which management believe reflects the intrinsic value of CWT.

Summary balance sheet information is set out below (table may not add due to rounding).

#### Summary Balance Sheet

(\$m)	30 June 2009	30 June 2010	Pro forma
Cash and cash equivalents	5.8	11.0	1.8
Property assets	257.1	226.8	203.7
Other assets	2.6	2.2	1.8
<b>Total Assets</b>	<b>265.6</b>	<b>240.0</b>	<b>207.3</b>
Derivative financial instruments	8.3	8.2	8.0
Interest bearing liabilities	149.3	140.3	123.7
Other liabilities	6.0	7.0	5.6
<b>Total Liabilities</b>	<b>163.6</b>	<b>155.5</b>	<b>137.3</b>
<b>Net Assets</b>	<b>101.9</b>	<b>84.5</b>	<b>69.9</b>
<b>NAV per unit</b>	<b>\$0.60</b>	<b>\$0.44</b>	<b>\$0.37</b>
Add: water rights fair value uplift	11.0	8.7	8.7
<b>Net Independent Value</b>	<b>112.9</b>	<b>93.2</b>	<b>78.6</b>
<b>NIV per unit</b>	<b>\$0.66</b>	<b>\$0.49</b>	<b>\$0.41</b>
Units on issue (millions)	170.3	190.8	190.8

#### Movement in NIV



CWT's debt facilities with its two lenders are subject to various covenants including gearing covenants specifying loan-to-value ratios of 57% (facility 1) and 60% (facility 2).

CWT was operating within its debt facility covenants as at 30 June 2010. The property valuations conducted for this Explanatory Memorandum resulted in a 10% devaluation of CWT's property portfolio (including foreign currency movements). CWT's banks have provided relief from covenant testing as at 31 December 2010. This covenant relief was provided only in the context of the Proposal and was provided to protect against the potential for continued property devaluations causing loan covenants to be exceeded while Unitholders considered the Proposal. CLIL considers that the relief would not otherwise have been made available in the absence of the Proposal.

The following table illustrates CWT pro forma gearing position relevant to its current loan to valuation covenants. The adjustments for the calculation of the pro forma gearing position are consistent with those detailed in the calculation of the Pro Forma NIV. Additionally this gearing position adjusts the repayment of debt via asset sales. The table illustrates that CWT is not likely to require the covenant relief described above. However, CWT is operating with limited headroom to its facility covenants.

Facility	LVR Covenant	CWT position		Headroom on security value		Headroom on debt	
		30 June	Pro-forma	\$m	%	\$m	%
Facility 1	<57%	55.0%	56.0%	1.7	1.8%	1.0	1.8%
Facility 2	<60%	58.6%	58.9%	2.0	1.8%	1.2	1.9%

## **(d) Australian and New Zealand market fundamentals**

### **(i) The Australian wine industry and vineyard sector**

In the 1990's and early 2000's Australia experienced significant vineyard planting in response to expected growth in both the domestic and export wine markets. These growth expectations did not materialise as a result of a number of factors including:

- 24% and 31% appreciation of the A\$ against the US\$ and UK pound respectively for the 5 years to 1 November 2010;
- Increased competition in key export markets from the new world wine countries (Chile, Argentina, South Africa and New Zealand);
- The impact of the GFC on exports of Australian wine to the UK and US, which together account for 65% of Australia's wine exports by volume (FY2010);
- The increase in UK wine taxes by 32% since 2005; and
- Significant consumer shift from Australian Chardonnay to New Zealand Sauvignon Blanc.

The above issues have resulted in declining wine industry margins and decreased winery demand for grapes resulting in over 13,147 ha of wine grapes left unharvested or dropped to the ground at the 2010 harvest. Lower grape demand has led to the current surplus in vineyard production capacity and 27 year low grape prices. In response, industry commentators recognise that a further 20-30,000 ha of vineyards may need to be removed based on current wine sales to re-balance demand and supply. This represents approximately 13-20% of total vineyards in Australia by area.

In this environment, vineyard property values have declined as a result of declining vineyard profitability and difficulty in sourcing grape contracts.

### **(ii) The New Zealand wine industry and vineyard sector**

Unlike Australia, which requires a removal of excess vineyard capacity, industry commentators believe that the current oversupply of wine grapes in New Zealand should be remedied by the growth in global demand for its wines over time.

The key issues for the New Zealand wine industry and vineyard sector include:

- A 22% appreciation of the NZ\$ against the UK pound for the 3 years to 1 November 2010;
- An increase in UK wine taxes of 32% since 2005;
- The Sauvignon Blanc bearing area increasing from 10,500 ha in 2007 to 16,900 ha in 2010 causing discounted bulk wine sales and hence reduced export prices; and
- A significant consumer shift from Australian Chardonnay to New Zealand Sauvignon Blanc resulting in total wine exports to Australia increasing from 9.7m litres in 2005 to 44.7m litres in 2010.

Wine grape prices have been steadily declining. In 2007 the average price for Sauvignon Blanc grapes in the Marlborough region was NZ\$2,360 per tonne compared to NZ\$1,215 per tonne in 2010.

In an effort to manage down total production to meet demand, many New Zealand wine companies are enforcing grape yield limits (tonnes per ha) on their contract growers. Average yields were down from 9 tonnes per ha across the country in 2009 to 8 tonnes per ha in 2010.

In this environment the value of vineyards has fallen.

## **3.2 2010 CWT Annual Report**

The 2010 CWT Annual Report contains more detailed information about CWT's assets, business, structure, outlook and Unitholders' profile. It also includes a copy of the audited consolidated financial statements of CWT for the financial year ended 30 June 2010.

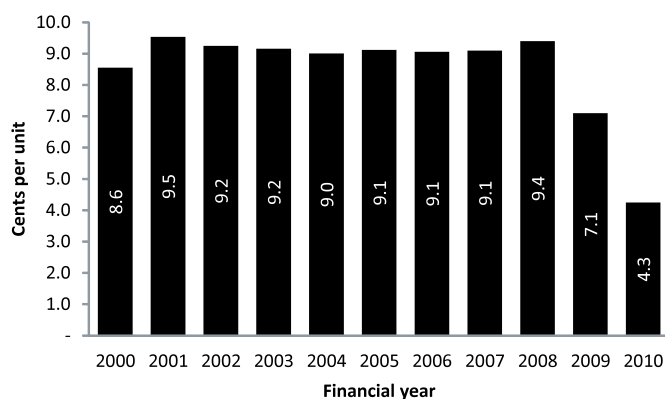
Unitholders can view the 2010 Annual Report on the CWT website [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt) or on the ASX website [asx.com.au](http://asx.com.au).

Any Unitholder who wants a copy of the 2010 Annual Report can call the Unitholder Information Line 1800 830 977 OR +61 2 8280 7492 (outside Australia) and a copy will be sent, free of charge.

### 3.3 CWT distributions

CWT has paid a quarterly distribution since listing in 1999, moving to a half-yearly distribution cycle in FY2010.

#### Distributions by financial year



At 30 June 2010, CWT retained approximately \$6 million of its second half earnings to pay down debt and reduce its gearing.

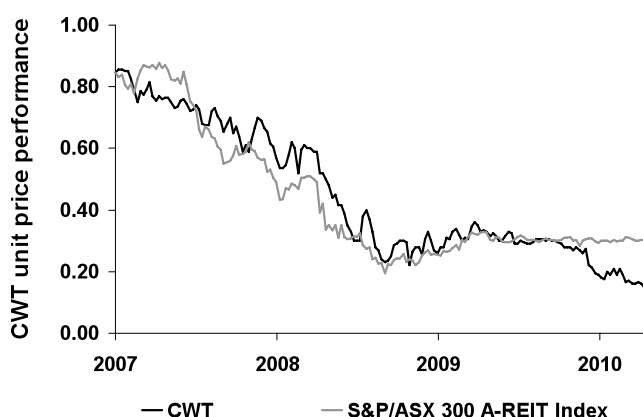
### 3.4 Recent Unit price performance

CWT's Unit price has declined since February 2007. The Board believes this reflects reduced investor confidence in the Australian and New Zealand wine industries and vineyard sectors, reduced investor appetite for specialist listed property trusts, property devaluations, the GFC and discomfort with the level of CWT gearing.

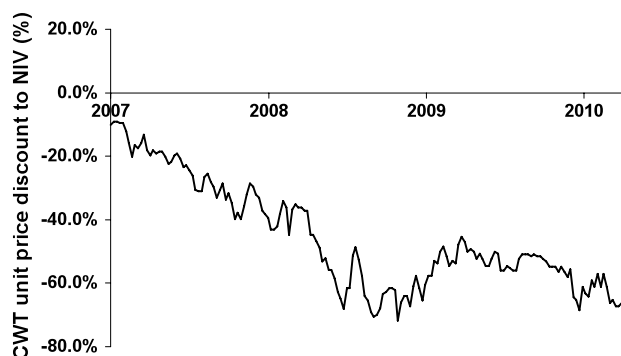
CWT's Unit price reached a low of \$0.135 on 22 October 2010, reflecting a 72% discount to NIV at that time of \$0.49 per Unit. CWT has consistently traded at a discount to NIV since January 2007 when NIV was first published with an average discount of 58% in the 12 months up to and including 1 November 2010.

CWT's market capitalisation remains small at approximately \$36 million as at 1 November 2010. Trading is relatively illiquid, approximately 19% of Units on issue have traded in the past 12 months up to an including 1 November 2010, which limits the attractiveness of CWT to new investors.

#### Unit price performance relative to A-REIT index



#### Unit price performance relative to NIV



### 3.5 Capital Management alternatives considered by the Board

The Board has actively considered and pursued a number of capital management alternatives (either as stand-alone or in combination) to address the challenges facing CWT. Each option is considered in detail below.

#### (a) Recapitalising through an underwritten rights issue

Key amongst the alternatives the Board has pursued has been an underwritten rights issue.

In order to provide certainty for CWT, the Board believes that any rights issue would need to be underwritten and the Board's adviser has indicated that achieving an underwritten rights issue would be conditional on securing suitable sub-underwriting.

To this end, since June 2010, CWT and its adviser have undertaken an extensive process seeking sub-underwriters to an equity raising. This process has included:



- approaching a wide range of potential sub-underwriters in Australia, Europe, Singapore, Hong Kong and the US, including property funds, institutional investors, hedge funds, distressed asset funds, special situation funds, agricultural investors, high net worth individuals and investment advisers;
- undertaking numerous presentations with these parties outlining the investment proposition with a view to securing them as sub-underwriters;
- providing due diligence information, answering due diligence queries and undertaking analysis for a number of potential investors; and
- approaching additional potential investors through a second adviser.

Based on feedback from potential investors that were approached during this process, there is uncertainty regarding CWT's ability to raise sufficient capital to achieve what the Board believes to be a reasonable level of asset value headroom. Key reasons cited by potential investors not to sub-underwrite an equity raising were:

- discomfort with the Australian and New Zealand wine industries and vineyard sectors, the timing of any turnaround and the potential for further devaluations before this time;
- that CWT has insufficient size and liquidity, even post the equity raising;
- discomfort with the credit quality of key tenants of CWT properties; and
- the level of rental income (and therefore yield) was considered unsustainable.

If CWT were able to raise sufficient capital through an underwritten rights issue, existing Unitholders would have to commit significant additional capital relative to their existing Unitholding to maintain their proportionate ownership interest and the rights issue would be significantly dilutive to NIV, earnings and distributions per Unit.

Two worked examples of potential rights issues are set out below based on a subscription price of 10.5c per new Unit and the outcome of discussions with CWT's banks regarding refinancing. This subscription price of 10.5c per new Unit was a price at which some interest in sub-underwriting participation was expressed. The sub-

underwriting interest was expressed, and the refinancing discussions occurred with the banks, prior to the recent devaluations announced by CWT on 26 November 2010 and the fall in the Unit price to a low of 13.5c on 22 October 2010.

The Board believes that asset value headroom of 20% across its facilities is a reasonable level for CWT to be sustainable based on:

- continued uncertainty in the Australian and New Zealand wine industries and vineyard sectors;
- recent volatility in CWT's property portfolio, illustrated by the \$74 million fall in the value of CWT's current property portfolio since 30 June 2008 from \$286 million to \$212 million on a pro forma basis, including a \$23.2 million fall (including foreign currency movements) since 30 June 2010;
- a potential fall in property valuations over the next four years as properties are re-leased at lower rents. It is estimated that as at 30 June 2010, CWT's rental income was 24.6% higher than would be achieved if the CWT properties were re-leased in the current market; and
- feedback from potential sub-underwriters of a rights issue.

The first example assumes CWT retains facilities with its two existing banks on terms on which they have previously indicated they would be willing to provide debt finance to CWT. It assumes the minimum paydown acceptable to one of the banks and achieving 5% asset value headroom on its second facility. Under this scenario, CWT would have only limited asset value headroom.

The second example assumes CWT has only one banking facility on the terms previously indicated by one of its current banks, and achieves asset value headroom of 20% on this facility. The Board believes this is a reasonable level for CWT for the reasons set out above. The table indicates that, in this example, a Unitholder would need to subscribe for 2.8 times the number of Units they held in order to maintain their proportional Unitholding if asset value headroom of 20% were to be achieved. If the Unitholder chose not to subscribe for the additional Units, they would suffer pro forma NIV dilution of 55.8%.

The table below illustrates that a Unitholder holding 42,000 Units (being the average holding of Units excluding

CLC), would need to commit \$12,300 to maintain their proportional ownership interest under the second example. Under the Proposal, the same Unitholder would receive \$10,080 in Scheme Consideration.

<b>Target asset value headroom<sup>11,12</sup> (weighted average)</b>	<b>8%</b>	<b>20%</b>
Equity raising size	\$44.3m	\$55.9m
Offer ratio	2.2 for 1	2.8 for 1
TERP <sup>13</sup>	\$0.122	\$0.119
Amount raised as % of market capitalisation	122.3%	154.3%
CWT average unitholding (Units)	42,000	42,000
Units required to maintain proportional ownership	93,000	117,100
Capital commitment required by an 'average' unitholder	\$9,800	\$12,300
NIV	\$120.7m	\$131.7m
Units on issue	613.1m	723.5m
NIV/Unit	\$0.197	\$0.182
NIV/Unit dilution <sup>14</sup>	52.2%	55.8%

#### (b) Retention of distributions

CWT could retain future distributions to pay-down the banks over time, however:

- One of CWT's facilities matures in May 2011, with a balance of \$64 million (including interest rate swaps), which will require re-financing with a lower level of gearing;
- CWT's net operating cash flow for the year to 30 June 2010 was \$16.1 million;
- the retention of taxable income in this manner may have adverse tax implications for some Unitholders; and
- CWT has traditionally been held by investors seeking income through distributions. In the absence of any distributions over an extended period, it is likely that the Unit price would fall significantly.

#### (c) Targeted asset sales with proceeds used to reduce portfolio gearing

A partial sell down of the portfolio is another option which has been pursued to reduce gearing.

The Board has been actively seeking to sell property since 2008. In 2009, CWT sought expressions of interest for its New Zealand property portfolio or any individual properties but this process did not result in CWT receiving any offers. Since then, CWT has achieved sales of some of its smaller Australian properties detailed in the table below, but no large sales have occurred.

<b>Property name</b>	<b>Date of sale</b>	<b>Amount (\$M)</b>	<b>Description</b>
Poole's Rock Vineyard & Winery	Expected in December 2010	5.0	Contracts exchanged with tenant
Gundagai (excluding separable water rights)	September 2010	1.0	Sold as going concern to tenant at expiry of lease
Cowra Station Vineyard	March 2010	0.5	Sold as vacant land after 12 months marketing. Vineyards removed by new owner
Dalswinton Vineyard	September 2009	1.3	Sold to dairy farmer who intended to remove vineyards
Bethany Creek and Vine Vale Vineyards	August 2009	0.8	Sold as vineyards after 12 months marketing
Sandy Hollow Vineyard	May 2009	2.0	Sold to horse stud owner after 6 months marketing. New owner intended to remove vineyard
Inglewood Vineyard	April 2009	0.6	Sold as going concern to tenant at lease expiry

<sup>11</sup> Asset value headroom measures the percentage fall in asset valuations required before banking covenants are breached

<sup>12</sup> First scenario assumes retention of the two banking facilities. Second scenario assumes migration into one facility

<sup>13</sup> Theoretical ex rights price up to and including 1 November 2010

<sup>14</sup> Dilution versus Pro Forma NIV per unit



Since CWT announced it was exploring capital management alternatives in June 2010, no parties have expressed interest in acquiring any of CWT's larger properties.

In order to repay the banking facility that matures in May 2011, CWT would require approximately \$64 million (including interest rate swaps). This represents approximately 30% of the current value of the portfolio, assuming book values could be achieved.

Adding this volume of properties to the market at this time is unlikely to maximise value, particularly as CWT would be seen as a forced seller and, in any event it is unlikely that this process would be concluded by May 2011 at reasonable prices.

#### **(d) An orderly wind up**

The Board has considered the possibility of returning funds to Unitholders through a wind up in an orderly process over the medium term. This option would involve the sale of the underlying properties over time, the repayment of outstanding debt and the distribution of any surplus proceeds post transaction costs to Unitholders.

The current market conditions are not conducive to undertaking significant sales and, in addition, the market may view CWT as a forced seller, restricting CWT's ability to achieve reasonable prices.

This approach would also require the co-operation of CWT's banks, as sales may not deliver the required reduction in gearing by the refinancing dates and could result in covenant breaches. In this event it is likely that the banks will require a suspension of distributions.

Given the execution and timing risks involved and the potential valuations that could be achieved, the Independent Directors do not believe an orderly wind up to be a superior alternative to the Proposal.

#### **(e) Conclusion**

The Board has considered a number of capital management alternatives to address the challenges faced by CWT. The Board has considered the extent to which each option would address the issues facing CWT listed above, the potential value outcomes for Unitholders, and the risks involved in pursuing each of those options.

In the event the Proposal does not proceed, Units may trade at materially less than the Scheme Consideration of \$0.24 cash per Scheme Unit, as was the case prior to the Proposal being announced. In addition, CWT would need to attempt a recapitalisation via an underwritten rights issue.

The Proposal provides Unitholders with certainty of value. The Independent Directors believe that the Proposal is the best option available to CWT in the absence of a superior proposal.

### **3.6 Independent Directors' recommendation**

#### **(a) Directors**

The Directors as at the date of this Explanatory Memorandum are:

<b>Director</b>	<b>Position</b>
Ms Brenda Shanahan	Non-executive Chair
Mr Ian Martens	Non-executive Director
Mr Geoff McWilliam	Non-executive Director
Mr Michael Cole	Non-executive Director
Mr Ian Moore	Non-executive Director
Mr Rob Woods	Executive Director
Mr Brendan O'Connor	Executive Director

#### **(b) Independent Directors' recommendation**

Ms Brenda Shanahan, Mr Ian Martens, Mr Geoff McWilliam, Mr Michael Cole and Mr Ian Moore are the Independent Directors. Each of the Independent Directors is assessed by the Board to be independent in accordance with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (2nd Edition).

Each of the Independent Directors considers himself or herself justified in making a recommendation in relation to the Proposal and each of them recommends that Unitholders vote in favour of the Resolutions, in the absence of a superior proposal.

Each of the Independent Directors who holds Units, or on whose behalf Units are held, intends to vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

Section 6.1 contains details of the Directors' interests in Units.

### (c) Non-independent Directors' position

Mr Rob Woods and Mr Brendan O'Connor are senior executives of the Challenger Group and remunerated by the Challenger Group. CLC is a subsidiary of Challenger.

Their positions are:

- Mr Rob Woods – Joint Chief Executive, Funds Management at Challenger.
- Mr Brendan O'Connor – Chief Financial Officer for Challenger's Funds Management division.

The CLC Group will continue to hold 27.7% of the Units in CWT after the Scheme is implemented and is party to arrangements (including the Securityholders Deed) which regulate its relationship with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme.

Given their positions as employees of the Challenger Group each of Mr Woods and Mr O'Connor does not consider himself justified in making a recommendation in respect of the Proposal and accordingly each of them makes no such recommendation.

Mr Woods will abstain from voting on the Resolutions in respect of the Units he owns. Section 6.1 contains details of the Directors' interests in Units.

## 3.7 What if Unitholders do not approve the Proposal?

### (a) Proposal not implemented and no Scheme Consideration paid

If the Proposal is not implemented, the Scheme Units will not be transferred to CKLS and you will not receive the Scheme Consideration.

In the event the Proposal does not proceed, CWT will remain listed on ASX and the Board believes it will need to attempt an underwritten rights issue to lower CWT's gearing significantly. The Board considers that an underwritten rights issue would:

- (i) be at a significant discount to the Scheme Consideration and a discount to the trading price of the Units before the Proposal was announced;

- (ii) require existing Unitholders to commit substantial additional capital relative to their existing Unitholding if they wished to maintain their proportional ownership interest in CWT; and
- (iii) be dilutive to NIV, earnings and distributions per Unit.

Section 3.5 sets out a table providing two illustrative examples of underwritten rights issues based on a number of assumptions.

In order to achieve a reasonable level of gearing the illustration indicates that, based on the assumptions outlined, the underwritten rights issue would:

- (iv) require existing Unitholders to subscribe for approximately 2.8 new Units for each Unit that they hold if they wished to maintain their proportional ownership interest in CWT; and
- (v) dilute NIV per Unit to approximately \$0.18.

### (b) Units will remain listed on ASX

If the Proposal is not implemented, Units will remain listed on ASX and CWT will continue to incur the costs of being listed on ASX.

### (c) Unit price risk

If the Proposal is not implemented, it is possible that Units will trade at lower prices than those at which they have traded since the Proposal was first announced to ASX on 8 November 2010.

# 4. Overview and implementation of the Proposal

## 4.1 Background

On 8 November 2010, CLIL (the responsible entity of CWT) announced to ASX that it had entered into a Scheme Implementation Agreement with CKLS pursuant to which CLIL agreed to give Unitholders the opportunity to consider the Proposal.

Prior to that announcement being made, CKLS was given access to certain of CWT's information pursuant to a confidentiality deed executed by CKLS to govern the disclosure of CWT confidential information for the purpose of facilitating CKLS's formulation of the Proposal.

Governance protocols were put in place by the Board to address any actual or perceived conflict of interest that may potentially arise in relation to the Proposal as a result of the connections between CLC Group entities and CLIL. These connections include the fact that CLIL, CMSL and CLC are all wholly-owned subsidiaries of Challenger and that the CLC Group holds an approximate 27.7% interest in CWT. The governance protocols were designed to ensure that:

- (a) the consideration by the Independent Directors and CLIL management of the Proposal was undertaken solely in the interests of Unitholders;
- (b) there was an orderly process for the various CLC Group entities for negotiating outcomes in connection with the Proposal and for CLIL in responding to the Proposal on behalf of CWT; and
- (c) there is a system in place for addressing any actual or contemplated competing proposal made by a third party.

The governance protocols included the Independent Directors being responsible for considering and assessing the Proposal and making all decisions concerning the Proposal or any competing proposal. Mr Rob Woods and Mr Brendan O'Connor have been excluded from those decisions. The governance protocols also include each of the relevant CLC Group companies being represented by separate management teams during the consideration of the Proposal and the existence of Chinese wall policies.

## 4.2 Overview of the Proposal

### (a) Scheme

The Proposal will be implemented by way of the Scheme which is a trust scheme, which is an arrangement to be implemented in accordance with the Guidance Note 15.

The Scheme involves the Scheme Units being transferred to CKLS in return for a cash payment to Scheme Participants of \$0.24 cash per Scheme Unit.

The Scheme is being facilitated by an amendment to the Trust Constitution as set out in the Supplemental Deed, a copy of which is set out in Attachment D.

The Scheme is conditional on the Resolutions being approved by the requisite majorities of Unitholders at the Meeting and a number of other conditions in Clause 3 of the Scheme Implementation Agreement, a copy of which is set out in Attachment C.

If the Scheme is implemented, Scheme Participants will receive a payment of \$0.24 cash in respect of each Scheme Unit they hold on the Record Date. CWT will subsequently be delisted from ASX.

### (b) Explanation of the Approval Resolution

The Approval Resolution is an approval of the Proposal for all purposes, including for the purposes of item 7 of section 611 of the Corporations Act, to allow CKLS to acquire a relevant interest in Scheme Units which acquisition would otherwise breach section 606 of the Corporations Act.

Section 606 of the Corporations Act prohibits the acquisition by a person of a relevant interest in the voting securities of an entity if the acquisition would result in that person's voting power in the entity increasing from 20% or below to more than 20%, unless the acquisition falls within one of the exceptions listed in section 611 of the Corporations Act. One of those exceptions is under item 7 of section 611 where the acquisition is approved by a resolution of Unitholders.

The Approval Resolution must be passed as an ordinary resolution and therefore will be passed if supported by a simple majority of votes cast on that Resolution (in person, by proxy, attorney or, in the case of corporate Unitholders, by corporate representative) by Unitholders entitled to vote on the Resolution.

Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast by CKLS and its associates (unless the associate is a custodian, nominee, trustee, responsible entity or other fiduciary which has received a specific instruction from a third party beneficiary, who is not an associate of CKLS, directing the associate how to vote) on the Approval Resolution. Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on the Approval Resolution.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on the Approval Resolution if they have an interest in the resolution other than as a member.

As at the date of this Explanatory Memorandum, CKLS has no relevant interest in the Units on issue. If the Scheme Units are transferred, CKLS will acquire a relevant interest in approximately 72.3% of the Units on issue, with the remainder continuing to be held by or on behalf of the CLC Group. Unitholder approval is therefore required under item 7 of section 611 of the Corporations Act for the transfer of the Scheme Units.

The Approval Resolution is conditional upon the passing of the Amendment Resolution and the Securityholders Deed Resolution.

The Approval Resolution and applicable voting exclusions are set out in the Notice of Meeting in Attachment A.

### **(c) Explanation of the Amendment Resolution**

The Amendment Resolution is an approval to the amendments to the Trust Constitution pursuant to section 601GC(1) of the Corporations Act. The amendments facilitate the transfer of the Scheme Units to CKLS for the Scheme Consideration, in a way which is binding on all Unitholders, and authorises CLIL to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments.

The Amendment Resolution must be approved as a special resolution and therefore will be passed if supported by at least 75% of the total number of votes cast on that Resolution at the Meeting (in person, by proxy, attorney, or in the case of corporate Unitholders, by corporate representative) by Unitholders entitled to vote on the Amendment Resolution.

Pursuant to Guidance Note 15, votes cast by CKLS and its associates and CLIL and its associates on the Amendment Resolution will be disregarded. Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on the Amendment Resolution. Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on the Amendment Resolution if they have an interest in the resolution other than as a member.

The Amendment Resolution is conditional upon the passing of the Approval Resolution and the Securityholders Deed Resolution.

The Amendment Resolution and applicable voting exclusions are set out in the Notice of Meeting in Attachment A.

### **(d) Explanation of the Securityholders Deed Resolution**

The Securityholders Deed Resolution is an approval for the purpose of item 7 of section 611 of the Corporations Act, to approve the terms of the Securityholders' Deed in so far as that agreement would, but for the approval, constitute an acquisition by CKLS of a relevant interest in the CWT Units held by the CLC Group in breach of section 606 of the Corporations Act.

Section 606 of the Corporations Act prohibits the acquisition by a person of a relevant interest in the voting securities of an entity if the acquisition would result in that person's voting power in the entity increasing from 20% or below to more than 20%. Section 609 of the Corporations Act provides for a number of situations in which an agreement will be deemed not to give rise to a relevant interest. In particular, section 609(7) provides that a person does not have a relevant interest in securities merely because of an agreement if, among other things, that agreement is conditional on a resolution of Unitholders being passed under item 7 of section 611.

The Securityholders Deed Resolution must be passed as an ordinary resolution and therefore will be passed if supported by a simple majority of votes cast on that Resolution (in person, by proxy, attorney or, in the case of corporate Unitholders, by corporate representative) by Unitholders entitled to vote on the Securityholders Deed Resolution.

Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast by CKLS or its associates or CLC and its associates (which includes the Challenger Group) in favour of the Securityholders Deed resolution.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on the Securityholders Deed Resolution if they have an interest in the resolution other than as a member.

The Securityholders Deed Resolution is conditional upon the passing of the Approval Resolution and the Amendment Resolution.

The Securityholders Deed Resolution and applicable voting exclusions are set out in the Notice of Meeting in Attachment A.

## 4.3 Steps for implementing the Proposal

### (a) Preliminary steps

CLIL, as responsible entity of CWT, and CKLS entered into a Scheme Implementation Agreement on 7 November 2010 pursuant to which they agreed to implement the Proposal. A copy of the Scheme Implementation Agreement is set out at Attachment C.

The obligations of CKLS under the Scheme Implementation Agreement and the Deed Poll are guaranteed by CKLS Holdings.

### (b) Meeting

CLIL has convened the Meeting for 31 January 2011 for the purposes of Unitholders voting on the Resolutions.

Each person who is registered on the Register as a Unitholder at 3.00 pm on 29 January 2011 is entitled to vote at the Meeting, either in person or by proxy or attorney or, in the case of a body corporate, by corporate representative (unless otherwise noted in the Notice of Meeting).

Instructions on how to attend and vote at the Meeting in person, or to appoint a proxy to attend and vote on your behalf are set out in the Notice of Meeting which is set out in Attachment A.

### (c) Satisfaction of any outstanding Conditions

If the Resolutions are passed by the requisite majorities of Unitholders, the only conditions in the Scheme Implementation Agreement which may be outstanding following the Meeting is the grant of OIO Approval and the no natural disasters condition. All other conditions must have been satisfied or waived by the time of the Meeting.

The application for the OIO Approval was submitted by CKLS on 23 November 2010. In a recent speech<sup>15</sup>, the Prime Minister of New Zealand stated that the average time for processing an application had dropped to 42 days. However, there is a risk that the OIO Approval will not be obtained within that time period, by the date of the Meeting, or at all. **If the OIO Approval is obtained after the date of the Meeting, there will be a delay in the Scheme being implemented and therefore the Scheme Consideration being paid to Scheme Participants.** If the OIO Approval is not obtained, CLIL and CKLS will not be obliged to proceed with the Scheme and either CKLS or CLIL may terminate the Scheme Implementation Agreement.

The conditions contained within the Scheme Implementation Agreement are summarised in Section 6.14 and the Scheme Implementation Agreement is set out in full in Attachment C.

### (d) Steps for implementing the Scheme

If the Scheme is approved by Unitholders and each of the Conditions is satisfied or where applicable, waived, then the key steps for implementing the Scheme are as follows:

- (i) CKLS will pay the Aggregate Scheme Consideration, being an amount equal to the Scheme Consideration of \$0.24 multiplied by the number of Scheme Units held by the Scheme Participants at the Record Date, by depositing that amount in cleared funds into an account nominated by CLIL; and

<sup>15</sup> Made to the Federated Farmers National Council on 17 November 2010



## 4. Overview and implementation of the Proposal

- (ii) CLIL will execute a master transfer on behalf of all Scheme Participants to transfer the Scheme Units to CKLS.

A copy of the Scheme Implementation Agreement is set out at Attachment C.

### (e) What Unitholders will receive

If the Proposal is implemented, Unitholders on the Register on the Record Date will be sent (either by electronic funds transfer to an account nominated by the Unitholder or by cheque sent by pre-paid post) \$0.24 per Scheme Unit held by them within three Business Days of the Implementation Date.

### 4.4 Payment of Scheme Consideration

The Scheme Consideration will be paid by CLIL making a payment to each Scheme Participant's bank account nominated with the Registry as at the Record Date.

If a Scheme Participant has not previously notified the Registry of a bank account or would like to change the existing nominated bank account, the Scheme Participant should contact the Registry on 1800 830 977 OR +61 2 8280 7492 (outside Australia) before the Record Date.

If a Scheme Participant does not have a nominated bank account with the Registry as at the Record Date, that Scheme Participant will be sent a cheque for any Scheme Consideration that the Scheme Participant is entitled to receive under the Scheme. If the Scheme Participant's whereabouts are unknown as at the Record Date, the Scheme Consideration will be paid into a separate bank account and held by CLIL on trust until claimed or applied under laws dealing with unclaimed money.

### 4.5 Determination of persons entitled to the Scheme Consideration

#### (a) Dealings on or prior to the Record Date

For the purpose of establishing the persons who are Scheme Participants, dealings in Units will only be recognised if:

- (i) in the case of dealings of the type to be effected by CHESS, the transferee is registered in the Register as a holder of the relevant Units by the Record Date; and
- (ii) in all other cases, the dealing occurs before the close of business on the Trading Cessation Date and a registrable transfer or transmission application in respect of the dealing is received by the Registry on or

before 7.00 pm on the Record Date. CLIL must register such transfers or transmission applications which it receives on or before the Record Date.

#### (b) Dealings after the Record Date

CLIL will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Units received after the Record Date or received prior to the Record Date and not in registrable form.

For the purposes of determining entitlements to Scheme Consideration, CLIL will, from the Record Date until the acquisition of the Scheme Units by CKLS, maintain the Register in this form, which, together with the terms of the Scheme, will determine entitlements to the Scheme Consideration.

As from the Record Date, each entry on the Register relating to Scheme Units will cease to be of any effect other than as evidence of entitlement to the Scheme Consideration in respect of Scheme Participants to the Scheme Consideration relating to that entry.

Any statements of holding in respect of Units shall, from the Record Date, cease to have any effect as documents of evidence of title in respect of such Units.

### 4.6 End Date

If the Scheme has not become effective by the 30 June 2011, either CLIL or CKLS is able to terminate the Scheme Implementation Agreement. If the Scheme Implementation Agreement is terminated, the Proposal will not proceed, and the Scheme Units will not be transferred to CKLS and you will not receive the Scheme Consideration. See section 3.7 for further details on what will happen if the Proposal does not proceed.

### 4.7 Further questions

If you have any questions about the Proposal or the Scheme, please contact the Unitholder Information Line 1800 830 977 OR +61 2 8280 7492 (outside Australia).

If you have a question about CWT (other than in relation to the Proposal or to the Scheme), please contact the CWT registry line on 1800 830 977 OR +61 2 8280 7492 (outside Australia).

For information about your individual financial or taxation circumstances, please consult your investment, legal, taxation or other professional adviser.



# 5. Non CLIL related information

## 5.1 CKLS Group

### (a) CKLS Holdings

CKLS Holdings is a company listed on the Main Board of the Stock Exchange of Hong Kong. CKLS Holdings had total net assets of HK\$5.28 billion (A\$671.8 million<sup>16</sup>) and net current assets of HK\$1.06 billion (A\$134.9 million<sup>17</sup>) as at 30 June 2010. These figures are unaudited.

### (b) CKLS

CKLS is a wholly owned subsidiary of CKLS Holdings and is a party to the Scheme Implementation Agreement.

The CKLS Group is engaged in the research and development, commercialisation, marketing and sale of health and agriculture related products and owns a number of agriculture-related businesses in Australia.

Following a number of acquisitions in the last few years, the CKLS Group has built up a portfolio of businesses in Australia that span a range of agriculture-related and health supplement and complementary medicine industries.

In accordance with the terms of the Scheme Implementation Agreement, CKLS has elected to proceed with the acquisition of Scheme Units through the CKLS Nominee, which is a wholly owned subsidiary of CKLS's parent company, CKLS Holdings. The CKLS Nominee has been established to facilitate the investment in the Scheme Units in a special purpose company, dedicated to this particular investment, consistent with the CKLS Group's overall corporate planning in relation to this investment.

### (c) Background to and ownership of CKLS Nominee

CKLS Nominee is a special purpose, wholly owned subsidiary of CKLS Holdings. If the Scheme is approved by the requisite majority of Unitholders at the Scheme

Meeting, and all of the Conditions are fulfilled or (where applicable) waived, CKLS Nominee will acquire approximately 72.3% of the Units in CWT as at the Record Date, being all Units other than Units held by or on behalf of CLC Group on that date which will represent the remaining 27.7% of the Units in CWT.

CKLS Nominee will also hold 72.3% of the shares in the New Trustee with CLC Group to hold the remaining 27.7% of the shares in the New Trustee. CKLS Nominee will nominate a majority of Directors of the board of the New Trustee.

### (d) CKLS Nominee's Officers

The current directors of CKLS Nominee are:

- (i) Shane Augustus Breheny;
- (ii) Alan Abel Ying Choi Yu; and
- (iii) Jerry Yiu Leung Mo.

The current company secretary and public officer is Shane Augustus Breheny.

## 5.2 Amount of Scheme Consideration

If the Scheme is approved by Unitholders, and each of the Conditions is satisfied or (where applicable) waived, CKLS will procure CKLS Nominee to pay the Scheme Consideration of A\$0.24 cash per Scheme Unit.

The total amount of cash required to be paid by CKLS Nominee under the Scheme is A\$33.08 million.

## 5.3 Funding arrangements

As stated above, CKLS Nominee is a new Australian proprietary company incorporated as a subsidiary of CKLS Holdings for the specific purpose of participating in acquiring the Scheme Units.

CKLS Holdings has confirmed to CWT that it has sufficient cash in bank deposits to satisfy all the Scheme

<sup>16</sup> Based on exchange rates prevailing at 7 November 2010

<sup>17</sup> Based on exchange rates prevailing at 7 November 2010

Consideration on the Implementation Date. There are no restrictions or conditions applying to the use of the bank deposits to pay the Scheme Consideration. Accordingly, an amount equal to the aggregate Scheme Consideration will be set aside from the cash in bank deposits for the sole purpose of providing the Scheme Consideration on the Implementation Date, unless (and to the extent) less of those funds are required if external debt is also arranged to satisfy part of the Scheme Consideration as referred to in the next paragraph.

As at 31 October 2010 the CKLS Group's HK dollar equivalent in cash and time deposits equated to HK\$765,867,646 (being approximately A\$97 million<sup>18</sup>), substantially in excess of the total amount required to fund the Scheme Consideration.

CKLS Nominee does, however, propose, to raise new debt funding to fund part of the Scheme Consideration and foresees no difficulty in doing so. As at the date of this Scheme Booklet, the amount and terms of such debt funding have not yet been finalised. In any event, the Scheme is not dependent or conditional on debt financing being available to CKLS Nominee.

If the new debt funding is finalised to CKLS Nominee's satisfaction by the Implementation Date that debt funding will be applied to satisfy part of the Scheme Consideration. If new debt funding is not finalised prior to the Implementation Date, CKLS Holdings has given an irrevocable undertaking in the form of a guarantee to CWT to provide sufficient funds to the CKLS Nominee to enable CKLS Nominee to pay all the Scheme Consideration on the Implementation Date.

CKLS has given a separate irrevocable undertaking in favour of the Scheme Participants to cause CKLS Nominee to pay the Scheme Consideration or to itself pay the Scheme Consideration. This undertaking is in the form of the Deed Poll. The guarantee given by CKLS Holdings extends to guaranteeing the performance by CKLS of its obligations under the Deed Poll.

The CKLS Nominee will be entitled to access the Scheme Consideration by written request directed to CKLS specifying the amount, time and bank account to which the Scheme Consideration is required to be remitted.

## 5.4 CKLS Nominee

CKLS Nominee, (an Australian incorporated company) rather than CKLS itself, will be acquiring the majority holding of Units in CWT, if the Scheme is implemented. Unitholders should note that CKLS Holdings has guaranteed all of the obligations of CKLS under the Scheme Implementation Agreement and the Deed Poll, including payment of the Scheme Consideration.

## 5.5 CKLS Nominee's intentions if the Scheme is implemented – New Trustee

This section sets out the intentions of CKLS Nominee, in its capacity as the majority Unitholder of CWT, the majority shareholder of shares in the New Trustee, and the party having the majority of Directors on the board of the New Trustee in relation to:

- the continuation of the business of CWT;
- any major changes to the business of CWT and any redeployment of the fixed assets of CWT; and
- the future role of CLIL as Responsible Entity of CWT if the Scheme is implemented.

If the Scheme is implemented, the CKLS Group intends to work together with the CLC Group (which will hold 27.74% of the Units in CWT (being all of the Units in CWT other than the Units held by CKLS Nominee), through CLC Sub (a special purpose wholly owned Subsidiary of CLC), to assess the current business environment and future prospects for CWT to determine what specific course of action they consider will be in CWT's best interests, refer to paragraphs (a) to (c) below.

CKLS Nominee and CLC Sub have entered into the Securityholders Deed which records the arrangements agreed between them for regulating their affairs as Unitholders in CWT and shareholders of the New Trustee following implementation of the Scheme. The New Trustee is also a party to the Securityholders Deed.

<sup>18</sup> Based on exchange rates prevailing at 7 November 2010

### **(a) CWT to be delisted**

If the Scheme is implemented CWT will become co-owned by CKLS Nominee and CLC Sub, the 2 special purpose investment vehicles of CKLS Holdings and CLC, respectively.

At the date of this Scheme Booklet, the New Trustee is a wholly owned subsidiary of CKLS Holdings. If the Scheme is implemented, the New Trustee will be co-owned, as to 72.3% by CKLS Nominee and 27.7% by CLC Sub.

Under the terms of the Scheme Implementation Agreement, CLIL will apply for CWT to be removed from the Official List of the ASX after all of the Scheme Units are registered in the name of the CKLS Nominee.

### **(b) Responsible Entity to be replaced by New Trustee**

If the Scheme is implemented, it is anticipated that the following events will occur in accordance with the terms of the Transitional Arrangements Deed:

- A new Australian company wholly owned by CWT will be appointed trustee of the CWT Subtrusts in place of CLIL;
- The appointment of the CWT Custodian as custodian of the CWT will be terminated;
- CWT will be deregistered as a managed investment scheme;
- The New Trustee will be appointed trustee of CWT in place of CLIL; and
- CWT will be renamed the 'Belvino Wine Trust'.

The New Trustee has also entered into a management deed appointing CMSL as manager of CWT, subject to and with effect from the appointment of the New Trustee as trustee of CWT. The terms of the management deed were negotiated by the New Trustee on an arms length basis, (recognising CKLS's majority interest in CWT following implementation of the Scheme), and provide for CMSL to supply substantially the same services as it currently provides to CWT under the same fee arrangements (see section 2.31)

### **(c) Business continuity**

The New Trustee has no intention of changing CWT's current business, or operations in any material manner. Changes, if any, will only be implemented once the New Trustee has completed its detailed review of CWT and its business, and in accordance with the terms of the Securityholders Deed.

CWT's main lenders have consented to the Scheme. As referred to in Section 2.15, CKLS Nominee has agreed with CLC Sub to explore options for re-financing a finance facility of CWT that matures in May 2011.

## **5.6 Rationale for the Proposal**

One of CKLS's strategies is to invest in agriculture-related assets with potential to provide satisfactory returns for well-capitalised and patient investors over the long term.

During the past few years, the CKLS Group has built up a portfolio of profitable businesses in Australia. Following the acquisition of Envirogreen from Brambles and CSR, and Nuturf from Nufarm, the Amgrow brand is now the second largest in the home garden market. With the 2007 acquisition of Lipa Pharmaceuticals Limited and the 2008 acquisition of Accensi Pty Ltd, the CKLS Group is now Australia's largest contract manufacturer of complementary healthcare medicines and largest independent toll manufacturer of crop protection products.

The Australian and New Zealand vineyard industry, although currently experiencing significant adverse conditions, does fall within and satisfy CKLS's long term investment criteria. CKLS believes the acquisition would further strengthen CKLS Group's agriculture businesses, and will provide CKLS access to vineyard assets on a scale sufficiently meaningful to be attractive to CKLS.

The statements made in this section are statements of present intention only and are based on the information concerning CWT (including information obtained in the course of due diligence investigations) and the general business environment which is known to CKLS at the time of preparation of this Scheme Booklet. Further decisions will only be made after having conducted the detailed review of CWT and its business if the Scheme is implemented. The Statements set out in this section may change as new information becomes available or circumstances change.

### 5.7 Holding in CWT

The CKLS Group does not hold any Units in CWT and has not been a party to any purchase or sale of Units in CWT in the 4 months prior to the date of this Explanatory Memorandum.

Simultaneously with the signing of the Scheme Implementation Agreement, CKLS Nominee and CLC Sub entered into the Securityholders Deed, following which CKLS Nominee and CLC Sub became associates for the purposes of the Corporations Act. However, CKLS Nominee does not have any relevant interest in any of CLC Sub's Units, and will not have any such interest unless the Resolutions are passed.

### 5.8 Benefits to Third Parties

The CKLS Group has not agreed to provide any benefits to third parties for voting in favour of the Scheme.

### 5.9 Benefits to CLC and its associates

As disclosed above:

- CLC Sub will continue as Unitholder in CWT with CKLS if the proposal is implemented and is party to a Securityholders Deed with CKLS which regulates the relationship of the CLC Group with the CKLS Group in relation to the affairs of CWT following implementation of the Scheme;
- CMSL is party to a management deed with the New Trustee pursuant to which CMSL is appointed as manager of CWT, subject to and with effect from the appointment of the New Trustee as trustee of CWT; and
- CLC Sub is a party to the Transitional Arrangements Deed.

All of these arrangements have been negotiated on an arm's length basis.

Other than as disclosed above (if and to the extent any of the matters disclosed constitutes a benefit to CLC or its associates), CKLS or its associates have not given CLC or its associates any collateral benefits in connection with the Proposal.

### 5.10 Other Material Information

The CKLS Group is not aware of any information that is material to the decision by a Unitholder whether to accept the Scheme that is not disclosed in this Explanatory Memorandum.

# 6. Additional information

## 6.1 Securities held by Directors

As at the date of this Explanatory Memorandum there were 190,759,842 Units on issue in CWT.

The Directors of CLIL and the number of Units in CWT, securities in CKLS Holdings and Challenger securities which are held by or on behalf of each Director of CLIL as at the date of this Explanatory Memorandum are set out in the table below:

<b>Director</b>	<b>Number of Units in CWT</b>	<b>Number of securities in CKLS Holdings</b>	<b>Number of Challenger shares</b>	<b>Number of Challenger options</b>
Ms Brenda Shanahan	400,000	Nil	250,000	Nil
Mr Ian Martens	262,612	Nil	10,000	Nil
Mr Geoffrey McWilliam	130,000	Nil	90,000	Nil
Mr Michael Cole	Nil	Nil	Nil	Nil
Mr Ian Moore	537,628	Nil	Nil	Nil
Mr Rob Woods	261,883	Nil	1,437,722	3,466,666
Mr Brendan O'Connor	Nil	Nil	21,991	432,666

Mr Rob Woods and Mr Brendan O'Connor also hold performance rights under Challenger's long term incentive plan, the details for which are set out in full in the remuneration report within Challenger's 2010 Annual Report which is available on the ASX's website at [asx.com.au](http://asx.com.au) and on Challenger's website [www.challenger.com.au](http://www.challenger.com.au) under the Investor Centre tab.

## 6.2 Director's voting intentions

All of the Independent Directors listed in the table above intend to exercise their voting rights to vote in favour of the Resolutions to approve the Proposal, in the absence of a superior proposal.

## 6.3 Interests held by Directors in contracts

Apart from Rob Woods' and Brendan O'Connor's employment contracts with the Challenger Group, no Director has an interest in any contract entered into by a CLC Group member or CKLS.

## 6.4 Other interests of Directors

No Director has any other interest, whether as a director, member or creditor of CWT or otherwise, material to the Scheme.

## 6.5 Agreements or arrangements with Directors

There is no agreement or arrangement made between any Director and any other person, in connection with or conditional upon the outcome of the Scheme.

## 6.6 Payments and other benefits to directors, secretaries or executive officers of CWT

No payment or other benefit is proposed to be made or given to a director, secretary or executive officer of CWT as compensation for loss of, or as consideration for or in connection with their retirement from, office in CWT as a result of the Proposal.

## 6.7 Trading of Units

The latest recorded sale price of Units on ASX before the date of this Explanatory Memorandum was \$0.23.

## 6.8 CWT's substantial holders

The substantial holders of Units as at the date of this Explanatory Memorandum are as follows:

Name	Number of Units	Voting power in Units
Challenger Financial Services Group Limited (which comprises those interests held by the CLC Group)	52,922,555	27.74%
Commonwealth Bank of Australia	10,330,416	5.42%

CWT has relied on substantial holder notices issued by Commonwealth Bank of Australia provided to it up to the date of this Explanatory Memorandum, which are available on the ASX website, to compile the above table. Information in regard to substantial holdings arising, changing or ceasing before this time or in respect of which the relevant announcement is not available on the ASX website is not included above.

## 6.9 Material changes in financial position

To the knowledge of each of the Directors, there has been no material change in the financial position of CWT since 30 June 2010, the date of the last audited balance sheet that was sent to Unitholders in accordance with section 314 of the Corporations Act, except as disclosed elsewhere in this Explanatory Memorandum including the information contained in Section 3.

Except as disclosed in the audited financial statements of CWT dated 30 June 2010, and as disclosed in Section 3, the financial position of CWT has not changed materially since 30 June 2010.

## 6.10 Suspension of trading of Units

Trading in Units will be suspended on the Business Day on which all Conditions are satisfied or (if applicable) waived.

If the OIO Approval Condition is not satisfied by the Effective Date, trading in Units will continue after the Effective Date.

The application for the OIO Approval was submitted by CKLS on 23 November 2010. There is a risk that the OIO Approval will not be obtained by the date of the Meeting or at all.

## 6.11 Information disclosed to ASX and documents lodged with ASIC

### (a) CWT continuous disclosure

CWT is a 'disclosing entity' for the purposes of the Corporations Act and as such is subject to periodic reporting and continuous disclosure obligations.

Publicly disclosed information about all listed entities, including CWT, is available on the ASX website [asx.com.au](http://asx.com.au). Publicly disclosed information about CWT is also available at its website [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt).

### (b) CWT documents

In addition, CLIL is also required to lodge various documents with ASIC. Copies of documents lodged with ASIC by CLIL may be obtained from, or inspected at, ASIC offices.

CLIL will provide free of charge, to any Unitholder who requests it before the Condition Satisfaction Date, a copy of:

- (i) the audited financial report of CWT and its controlled entities for the year ended 30 June 2010 (being the annual financial report most recently lodged with ASIC before this Explanatory Memorandum was lodged with ASIC); and
- (ii) each continuous disclosure notice given to ASX by CLIL after lodgement with ASIC of the annual report referred to above on 13 September 2010 and before the Meeting.

## 6.12 Consents

The Independent Expert has given and not withdrawn its consent to the inclusion of the Independent Expert's Report in Attachment E and to the references to the Independent Expert's Report in this Explanatory Memorandum being made in the form and context in which each such reference is included in this Explanatory Memorandum.



Blake Dawson has given and not withdrawn its consent to the inclusion of the tax report in Attachment F and to the references to that report in this Explanatory Memorandum being made in the form and context in which each such reference is included in this Explanatory Memorandum.

CKLS has given and has not withdrawn its consent to the inclusion of all the information that is contained in Section 5 and to the references to that information in this Explanatory Memorandum being made in the form and context in which each such reference is included in this Explanatory Memorandum.

## 6.13 Supplementary information

CLIL will issue a supplementary document to this Explanatory Memorandum if it becomes aware of any of the following between the date of despatch of this Explanatory Memorandum and the date of the Meeting:

- (a) a statement in this Explanatory Memorandum is misleading or deceptive;
- (b) an omission of information required by the Corporations Act or Guidance Note 15 to be included in the Explanatory Memorandum; or
- (c) a new circumstance relevant to the Proposal which, had it arisen prior to the date of despatch of this Explanatory Memorandum, would have been required to be included in the Explanatory Memorandum,

that is material from the point of view of a Unitholder.

Depending on the nature and the timing of the changed circumstances and subject to obtaining any relevant approvals, CLIL may circulate and publish any supplementary information by:

- (a) placing an advertisement in a prominently placed newspaper which is circulated generally throughout Australia; and/or
- (b) posting the supplementary information in an announcement on the ASX announcements platform [asx.com.au](http://asx.com.au) and on CWT's website [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt); and/or
- (c) posting the supplementary document to all Unitholders.

## 6.14 Conditions to Scheme

The Scheme and the obligations of CLIL and CKLS under the Scheme are subject to the following relevant conditions being satisfied (or waived) in accordance with the terms of the Scheme Implementation Agreement:

- (a) (ASIC Modification) before the date of the Meeting ASIC has granted the ASIC Modification or, in respect of any ASIC Modification which has not been granted, has indicated in writing that such a modification is not required;
- (b) (Independent Expert's Report) the Independent Expert's Report concludes that the Scheme is in the best interests of the CWT Unitholders;
- (c) (Unitholder approval) the Resolutions are approved at the Scheme Meeting by the requisite majorities of Unitholders under the Corporations Act and in accordance with Guidance Note 15 before the expiry of 3 months from the date of the Scheme Implementation Agreement;
- (d) (no Prescribed Occurrence) from the date of the Scheme Implementation Agreement until 8.00am on the date of the Meeting there is no Prescribed Occurrence;
- (e) (OIO Approval) CKLS obtaining OIO Approval which is subject only to customary conditions or conditions that CKLS has agreed to in its application; and
- (f) (no Material Adverse Change)
  - (i) before midnight on the date of the Meeting, there being no material adverse change of an ongoing nature to the business, financial position or results of operations or financial performance of CWT from the business, financial position or results of operations or financial performance of CWT existing at the date of the Scheme Implementation Agreement;
  - (ii) no natural disaster occurring after midnight on the date of the Meeting and before 31 March 2011 which would result in the total payments received under all leases for the ensuing 3 years to be reduced by more than 25% of what the rental would have been had the natural disaster not occurred.

If the Resolutions are passed by the requisite majorities of Unitholders, the only Conditions in the Scheme Implementation Agreement which are likely to be outstanding following the Meeting is the grant of OIO Approval and the no natural disasters Condition. All other Conditions must have been satisfied or waived by the time of the Meeting.

The OIO Approval is required because on implementation of the Proposal CKLS will acquire more than 25% of the Units of CWT, and CWT owns properties in New Zealand which fall within a prescribed class of property under the Overseas Investment Act 2005 (New Zealand).

The application for the OIO Approval was submitted by CKLS on 23 November 2010. In a recent speech<sup>16</sup>, the Prime Minister of New Zealand stated that the average time for processing an application had dropped to 42 days. However, there is a risk that the OIO Approval will not be obtained within that time period, by the date of the Meeting or at all.

Full details of the Conditions, the ability of CKLS and CLIL to rely on various of the conditions and the provisions relating to the satisfaction or waiver of those conditions, are set out in clause 3 of the Scheme Implementation Agreement a copy of which is set out in Attachment C.

As at the date of this Explanatory Memorandum, the Directors are not aware of any reason why the Conditions should not be satisfied.

In addition, CLIL has agreed to reimburse CKLS for its actual external costs incurred in relation to the Proposal (subject to a cap of \$330,000 plus GST if applicable) if at any time before the date of the Meeting any of the following occur and CKLS does not proceed to acquire all of the Scheme Units by 30 June 2011:

- (a) a superior proposal is announced or open for acceptance and, whether before or within three months after 30 June 2011, that superior proposal is completed substantially in accordance with its terms; or
- (b) the Independent Directors fail to make, or withdraw, a recommendation to Unitholders vote in favour of the Scheme Resolutions other than in circumstances where the Independent Expert has concluded that the Scheme is not in the best interests of Unitholders.

<sup>16</sup> Made to the Federated Farmers National Council on 17 November 2010

Capitalised terms appearing in this Section 6.14 and not otherwise defined in the Glossary are defined in clause 1 of Scheme Implementation Agreement a copy of which is set out in Attachment C.

### 6.15 Material agreements

The following material agreements have been entered into in connection with the Proposal:

#### (a) Scheme Implementation Agreement

Scheme Implementation Agreement between CLIL and CKLS dated 7 November 2010 (see Attachment C for a copy of the Scheme Implementation Agreement).

#### (b) Deed Poll

On 14 December 2010, CKLS executed the Deed Poll pursuant to which CKLS makes a number of covenants in favour of the Scheme Participants. A number of these covenants are set out in Section 6.19 and a copy of the Deed Poll is set out at in Attachment B.

#### (c) Supplemental Deed

If the Proposal is approved, CLIL (in its capacity as responsible entity of CWT) will enter into the Supplemental Deed. The Supplemental Deed will amend the Trust Constitution in order to facilitate the Scheme and contains specific provisions which are necessary to implement the Scheme.

Under the Trust Constitution as amended by the Supplemental Deed, each Scheme Participant irrevocably:

- (i) agrees to transfer all of their Scheme Units to CKLS;
- (ii) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising as a result of the Supplemental Deed;
- (iii) appoints CLIL and each of its directors and officers as their attorney and agent for the purpose of executing any document or doing any other act necessary to give full effect to the Scheme and the transactions contemplated by the Scheme;
- (iv) consents to CLIL and CKLS doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by the Scheme; and

- (v) appoints CLIL to enforce the Deed Poll against CKLS on their behalf and as their agent.

The Supplemental Deed will bind CWT and all Unitholders, including those who do not attend the Meeting, those who do not vote at that meeting and those who vote against the Resolutions.

A copy of the Supplemental Deed is set out in Attachment D.

## 6.16 ASIC modifications and relief

- (a) ASIC has indicated that it will grant a modification of item 7 of section 611 of the Corporations Act, to allow Unitholders other than CKLS and its associates (unless the associate is a custodian, nominee, trustee, responsible entity or other fiduciary which has received a specific instruction from a third party beneficiary, who is not an associate of CKLS, directing the associate how to vote) to vote in favour of the Scheme for the purpose of item 7 of section 611 of the Corporations Act.
- (b) ASIC has indicated that it will grant relief to CLIL from section 601FC(1)(d) of the Corporations Act to the extent necessary to allow CLIL to treat CLC differently from other Unitholders under the Scheme by excluding the Units held by CLC from the Scheme.

## 6.17 ASX confirmations

ASX has indicated to CWT that:

- (a) it has no objection to the proposed amendments to the Trust Constitution giving effect to the Scheme; and
- (b) the timetable for the Scheme is acceptable to ASX.

## 6.18 Costs and expenses

CLIL (as responsible entity for CWT) has and will incur costs in connection with the Proposal. It is estimated that these costs will total approximately \$2.3 million. As at the date of this Explanatory Memorandum, costs of approximately \$0.6 million have been incurred by CLIL in connection with the Proposal. These costs include advisory fees, fees payable in relation to the Independent Expert's Report and costs associated with the publication of the Explanatory Memorandum and the holding of the Meeting.

## 6.19 Undertakings by CKLS

### (a) Scheme Consideration

Subject to the Scheme becoming Effective, CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll to, or procure the CKLS Nominee to, accept the transfer of the Scheme Units from the Scheme Participants and pay the Scheme Consideration for the Scheme Units in accordance with clause 7 of the Scheme Implementation Agreement.

CKLS Holdings has provided a guarantee in respect of the obligations of CKLS to pay or procure the CKLS Nominee to pay the Scheme Consideration under the Deed Poll.

### (b) Scheme implementation

CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll to do all things that it is required to do under the Scheme Implementation Agreement to implement the Scheme.

A copy of the Scheme Implementation Agreement is set out in Attachment C.

CKLS Holdings has provided a guarantee in respect of the obligations of CKLS under the Deed Poll.

### (c) Supplementary information

CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll that it will provide supplementary information to ASX (with a copy to ASIC) if it becomes aware of any of the following matters between the date of despatch of this Explanatory Memorandum and the date of the Meeting:

- (i) a statement in the CKLS Information that is misleading or deceptive;
- (ii) an omission from the CKLS Information of information required by the Corporations Act or Guidance Note 15 to be included in the CKLS Information; and
- (iii) a new circumstance relevant to CKLS or the CKLS Information which, had it arisen prior to the date of despatch of this Explanatory Memorandum, would have been required to be included in the Explanatory Memorandum,

that is material from the point of view of a Unitholder.

### **(d) Acquisition of Units**

CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll that it will not, and will procure that its associates (as defined in section 12(2) of the Corporations Act) will not, acquire Units other than via the Scheme until the earlier of:

- (i) the Scheme being implemented;
- (ii) either or both of the Approval Resolution and the Amendment Resolution not being approved by Unitholders at the Meeting; or
- (iii) the termination of the Scheme Implementation Agreement.

### **(e) Compliance with various takeover provisions of the Corporations Act**

CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll that, subject to any differential treatment of Scheme Participants which is inherent in the Scheme, the Scheme will as far as practicable comply with the following sections of the Corporations Act as they would apply if CKLS were making a takeover bid for CWT on similar terms:

- (i) subsection 618(1) and section 619;
- (ii) subsections 621(3), (4) and (5) as modified by ASIC class order 00/2338; and
- (iii) sections 622, 623, 627, 628 and 651A.

For the purposes of the undertaking, the date of the despatch of the Explanatory Memorandum will be:

- (i) the date of the bid for the purposes of applying subsection 621(3), (4) and (5) of the Corporations Act; and
- (ii) the first date of the bid period (which will end immediately after the Meeting) for the purposes of applying section 623 of the Corporations Act.

### **(f) Further assurances**

CKLS has undertaken for the benefit of Scheme Participants in the Deed Poll that, it must on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Participant, execute all documents and take all necessary action within its power as may be necessary or desirable to give full effect to the provisions of the Deed Poll and the transactions contemplated by it.

### **6.20 Other material information**

CLIL is not aware of any material information about CWT that is material to a decision by a Unitholder on how to vote in relation to the Scheme and which:

- (a) has not been available to the Independent Expert in the manner referred to above for the purpose of preparing the Independent Expert's Report; or
- (b) is not set out or referred to in this Explanatory Memorandum; or
- (c) has not otherwise been made available publicly by CWT.

# 7. Glossary

## Definitions

In this Explanatory Memorandum, unless the context otherwise requires:

**Aggregate Scheme Consideration** means the Scheme Consideration multiplied by the number of Scheme Units.

**Amendment Resolution** means Resolution of the Unitholders to approve amendments to the Trust Constitution in accordance with the provisions of the Supplemental Deed to facilitate the Scheme and to authorise CLIL to execute and lodge with ASIC the Supplemental Deed effecting those amendments.

**Approval Resolution** means the Resolution of the Unitholders to approve for all purposes, including item 7 of section 611 of the Corporations Act, the steps required to implement the Scheme.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.

**ASX Listing Rules** means the official listing rules, from time to time, of ASX.

**Board** means the board of directors of CLIL (in its capacity as responsible entity of CWT).

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

**Challenger** means Challenger Limited (ABN 85 106 842 371) formerly known as Challenger Financial Services Group Limited.

**Challenger Group** means Challenger and its related bodies corporate.

**CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement and Transfer Corporation Pty Limited (ABN 49 008 504 532).

**CKLS** means CK Life Sciences Int'l., Inc. (incorporated in the British Virgin Islands with limited liability) or the CKLS Nominee, as the context requires.

**CKLS Group** means CKLS and its related bodies corporate.

**CKLS Holdings** means CK Life Sciences Int'l., (Holdings) Inc. (a company listed on the Main Board of the Stock Exchange of Hong Kong (stock code: 775)) of 2 Dai Fu Street, Taipo Industrial Estate, New Territories, Hong Kong.

**CKLS Information** has the meaning given in the Important Notices section of this Explanatory Memorandum, beneath the sub-heading "Responsibility for information".

**CKLS Nominee** means Regenal Investments Pty Limited (ACN 147 113 531).

**CLC** means Challenger Life Company Limited (ABN 44 072 486 938) or CLC Sub, as the context requires.

**CLC Group** means CLC and its controlled entities and **CLC Group Member** means any one of them.

**CLC Sub** means LANV Pty Ltd (ACN 147 224 502).

**CLIL** means Challenger Listed Investments Limited (ABN 94 055 293 644).

**CLIL Information** means all information in this Explanatory Memorandum or otherwise provided to Unitholders in connection with the Scheme, other than the CKLS Information.

**CMSL** means Challenger Management Services Limited (ABN 29 092 382 842).

**Conditions** means the conditions precedent set out in clause 3.2 of the Scheme Implementation Agreement.

**Conditions Satisfaction Date** means the date on which the last of the Conditions is satisfied or waived under clause 3.3 of the Scheme Implementation Agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified in respect of CWT or the Scheme.



**CWT** means Challenger Wine Trust (ARSN 092 960 060).

**CWT Custodian** means Australian Executor Trustees (SA) Limited (ABN 23 007 870 644).

**CWT Subtrusts** means the McGuigan Simeon Trust, the Southcorp Trust, and the Delegates Trust.

**Deed Poll** means the document under which CKLS covenants in favour of Scheme Participants to, amongst other things, perform its obligations under the Scheme Implementation Agreement, a copy of which is set out in Attachment B.

**Director** means a director on the Board as at the date of this Explanatory Memorandum.

**Effective** means the coming into effect of the Supplemental Deed pursuant to subsection 601GC(2) of the Corporations Act.

**Effective Date** means the date on which CLIL lodges the Supplemental Deed with ASIC.

**Explanatory Memorandum** means this explanatory memorandum.

**FY** means financial year.

**GST** means the same as in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guidance Note 15** means *Guidance Note 15: Listed Trusts and Managed Investment Scheme Mergers* issued by the Takeovers Panel of Australia.

**Implementation Date** means the date which is two Business Days after the Record Date or such other date as CLIL and CKLS agree in accordance with the Scheme Implementation Agreement.

**Independent Directors** means Ms Brenda Shanahan, Mr Ian Martens, Mr Geoffrey McWilliam, Mr Michael Cole and Mr Ian Moore.

**Independent Expert** means KPMG.

**Independent Expert's Report** means the report prepared by the Independent Expert stating whether or not, in the Independent Expert's opinion:

- (a) the Scheme is fair and reasonable for the Unitholders not associated with CKLS; and
- (b) the Scheme is in the best interests of the Unitholders,

not associated with CKLS.

**KPMG** means KPMG Corporate Finance (Aust) Pty Ltd ABN 43 007 363 215.

**Management Agreement** means the management agreement entered into between CLIL and CMSL dated 12 April 2006 (as amended), pursuant to which the Manager is to provide management services in relation to CWT and the CWT Subtrusts.

**Meeting** means the general meeting of Unitholders held so Unitholders can consider and, if thought fit, approve the Resolutions which is to be held at 3.00 pm on Monday, 31 January 2011 in the Lyceum Room in the Wesley Centre, 220 Pitt Street Sydney NSW 2000, the notice for which is set out at Attachment A.

**NAV** means net asset value.

**New Trustee** means Belvino Investments Pty Limited (ACN 147 114 387).

**NIV** means net independent value and is calculated as NAV plus the fair value increment of water rights.

**Non-Associated Unitholder** has the meaning given in the Independent Expert's Report.

**Notice of Meeting** means the notice convening the Meeting together with proxy form for the Meeting as set out in Attachment A.

**OIO Approval** means all consents in writing required under the Overseas Investment Act 2005 (New Zealand) for the acquisition by CKLS of the Scheme Units.

**Prescribed Occurrence** has the meaning given to it in clause 1 of the Scheme Implementation Agreement, a copy of which is set out in Attachment C.

**Pro Forma NIV** means the audited net asset value plus the fair value increment of water rights as at 30 June 2010, adjusted for changes in property valuations, currency movements at a foreign exchange rate of AUD/NZD1.2816, fair value movements on interest swaps, and cash flow to 31 October 2010.

**Proposal** means the arrangement pursuant to which CKLS (or the CKLS Nominee) will acquire the Scheme Units in CWT.

**Record Date** means 7.00 pm on the date that is 5 Business Days after the Condition Satisfaction Date or such other date as may be agreed by the CKLS and CLIL in writing.



**Register** means the register of holders of Units from time to time, as administered by CLIL in accordance with section 168 of the Corporations Act.

**Registry** means Link Market Services Limited (ABN 54 083 214 537).

**Resolutions** means the resolutions of the Unitholders to:

- (a) approve for all purposes, including item 7 of section 611 of the Corporations Act, the steps required to implement the Scheme (**Approval Resolution**);
- (b) approve amendments to the Trust Constitution as set out in the Supplemental Deed to facilitate the Scheme and to authorise CLIL to execute and lodge with ASIC the Supplemental Deed effecting those amendments (**Amendment Resolution**); and
- (c) to approve for the purposes of item 7 of 611 of the Corporations Act the terms of the Securityholders' Deed in so far as that agreement would, but for the approval, constitute an acquisition by CKLS of a relevant interest in CWT Units held by the CLC Group (**Securityholders Deed Resolution**).

**Scheme** means the arrangement, in accordance with Guidance Note 15, under which CKLS (or the CKLS Nominee) acquires all of the Scheme Units that is facilitated by amendments to the Trust Constitution as set out in the Supplemental Deed, subject to the Resolutions being approved by the requisite majorities of Unitholders and each of the Conditions being satisfied or (where applicable) waived.

**Scheme Consideration** means \$0.24 cash for each Scheme Unit.

**Scheme Implementation Agreement** means the Scheme Implementation Agreement dated 7 November 2010 between CLIL and CKLS, a copy of which is set out in Attachment C.

**Scheme Participant** means each person registered as the holder of a Scheme Unit on the Record Date.

**Scheme Units** means Units on issue as at the Record Date (other than any Units held by or on behalf of the CLC Group).

**Securityholders Deed** means the deed dated 7 November 2010 between CLC Sub, the New Trustee and CKLS Nominee regulating the affairs of the parties in relation to CWT following implementation of the Scheme.

**Securityholders Deed Resolution** means the Resolution of the Unitholders to approve for the purposes of item 7 of section 611 of the Corporations Act, the terms of the Securityholders' Deed in so far as that agreement would, but for the approval, constitute an acquisition by CKLS of a relevant interest in the Units held by the CLC Group.

**Supplemental Deed** means a deed poll pursuant to which CLIL (in its capacity as responsible entity of the CWT) will amend the Trust Constitution for the purpose of facilitating the Scheme, a copy of which is set out in Attachment D.

**Trading Cessation Date** means the Business Day on which all of the conditions to the Scheme are satisfied or (where applicable) waived.

**Transitional Arrangements Deed** means the change of trustee and transitional arrangements deed between CLIL as trustee of CWT and the CWT Subtrusts, CLC Sub, CKLS Nominee and the New Trustee, dated 8 November 2010.

**Trust Constitution** means the constitution establishing CWT (as amended from time to time).

**Unit** means an ordinary unit on issue in CWT.

**Unitholder** means a person who is registered as the holder of a Unit in the Register from time to time.

**VWAP** means volume-weighted average price which is the ratio of the value of securities traded to total volume of securities traded over a particular timeframe.

**WALE** means weighted average lease expiry.

# Attachment A

## Notice of Meeting

Notice is hereby given by Challenger Listed Investments Limited (ABN 94 055 293 644) (CLIL) as responsible entity for Challenger Wine Trust (ARSN 092 960 060) (CWT) that a meeting of Unitholders will be held:

<b>Date</b>	Monday, 31 January 2011
<b>Registration</b>	2:45pm (Sydney time)
<b>Commencement</b>	3.00 pm (Sydney time)
<b>Venue</b>	Lyceum Room in the Wesley Centre, 220 Pitt Street, Sydney
<b>Proxy Form Deadline</b>	3.00 pm (Sydney time) 29 January 2011

Ms Brenda Shanahan has been appointed by CLIL to chair the Meeting (Chair).

## Quorum

The quorum for the Meeting is at least two Unitholders together. If a quorum is not present, the Meeting will be adjourned to a place, time and date determined by CLIL.

## Business

The business of the meeting will consist of the following:

### Resolution 1 – Approval of the Proposal

To consider and, if thought fit, pass an ordinary resolution as follows:

Subject to Resolutions 2 and 3 being passed, THAT for the purposes of item 7 of section 611 of the *Corporations Act 2001* and for all other purposes, the Scheme, as described in the Explanatory Memorandum accompanying this Notice of Meeting (with or without such modifications as are approved at the Meeting) including the acquisition by CKLS or the CKLS nominee of a relevant interest in all the Scheme Units pursuant to the Scheme, be approved and Challenger Listed Investments Limited be authorised to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Scheme.

The Chair will determine that Resolution 1 will be decided on a poll and can only be passed if at least 50% of the value of eligible Units voted on the resolution are in favour.

## Voting

Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast in favour of Resolution 1 by CKLS and its associates (unless the associate is a custodian, nominee, trustee, responsible entity or other fiduciary which has received a specific instruction from a third party beneficiary, who is not an associate of CKLS, directing the associate how to vote). Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on Resolution 1.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on Resolution 1 if they have an interest in the resolution other than as a member.

## Recommendation

Each of the Independent Directors recommends that you vote in favour of Resolution 1.

### Resolution 2 – Amendments to Constitution

To consider and, if thought fit, pass a special resolution as follows:

Subject to Resolutions 1 and 3 being passed, THAT the constitution of Challenger Wine Trust (Constitution) be amended in accordance with the provisions of the supplemental deed poll in the form tabled at the meeting and initialled by the Chair for the purposes of identification (Supplemental Deed), and that Challenger Listed Investments Limited be authorised to execute the Supplemental Deed and lodge it with the Australian Securities and Investments Commission to give effect to the amendments to the Constitution.

Resolution 2 will be decided on a poll and can only be passed if at least 75% of the value of eligible Units voted on the resolution are in favour.

## Voting

Pursuant to Guidance Note 15, votes cast by CKLS and its associates and CLIL and its associates on Resolution 2 will be disregarded. Due to the arrangements entered into by CKLS and CLC in relation to the Units held by the CLC Group, CLC and the other members of the Challenger Group are associates of CKLS and are therefore excluded from voting on Resolution 2.

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on Resolution 2 if they have an interest in the resolution other than as a member.

## Recommendation

Each of the Independent Directors recommends that you vote in favour of Resolution 2.

### Resolution 3 – Approval of the Securityholders Deed

To consider and, if thought fit, pass an ordinary resolution as follows:

Subject to Resolutions 1 and 2 being passed, THAT for the purposes of item 7 of section 611 of the *Corporations Act 2001* and for all other purposes, the Securityholders Deed, as described in the Explanatory Memorandum accompanying this Notice of Meeting (with or without such modifications as are approved at the Meeting), be approved.

The Chair will determine that Resolution 3 will be decided on a poll and can only be passed if at least 50% of the value of eligible Units voted on the resolution are in favour.

## Voting

Pursuant to item 7 of section 611 of the Corporations Act, no votes may be cast in favour of Resolution 3 by CKLS and its associates or CLC and its associates (which includes the Challenger Group).

Pursuant to section 253E of the Corporations Act, CLIL and its associates are not entitled to vote on Resolution 3 if they have an interest in the resolution other than as a member.

## Recommendation

Each of the Independent Directors recommends that you vote in favour of Resolution 3.

## Background Information – Explanatory Memorandum

This Notice of Meeting should be read in conjunction with the Explanatory Memorandum accompanying this Notice of Meeting. The Explanatory Memorandum contains an explanation of the Resolutions and further information about the Proposal to enable you to make an informed decision as to how to vote on the Resolutions.

Unless otherwise defined in this Notice of Meeting, terms used in this Notice of Meeting have the same meaning as defined in the Glossary.

## Voting in person, by attorney or corporate representative

If you wish to vote in person, you must attend the Meeting.

If you cannot attend the Meeting, you may vote by proxy, attorney or, if you are a body corporate, by appointing a corporate representative.

Attorneys who plan to attend the Meeting should bring with them the original or a certified copy of the power of attorney under which they have been authorised to attend and vote at the Meeting.

A body corporate which is a Unitholder may appoint an individual to act as its corporate representative. The appointment must comply with the requirements of section 250D and 253B of the Corporations Act. The corporate representative should bring to the Meeting evidence of his or her appointment, including any authority under which it is signed.

## Voting by proxy

If you wish to appoint a proxy to attend and vote at the Meeting on your behalf, please complete and sign the proxy form for the Meeting accompanying this Notice of Meeting and Explanatory Memorandum in accordance with the instructions set out on the proxy form. You may complete the proxy form in favour of the Chair of the Meeting or appoint up to two proxies to attend and vote on your behalf at each Meeting.

The proxy form, duly completed in accordance with the instructions set out on each proxy form, may be returned to the Registry by:

- (a) posting it in the reply paid envelope provided;
- (b) delivering it during business hours on a Business Day to Level 12, 680 George Street, Sydney, NSW 2000;
- (c) faxing it to + 61 2 9287 0309; or
- (d) posting it to C/- Link Market Services, Locked Bag A14, Sydney South, NSW 1235.

Proxy forms may also be lodged online at Link Market Services' website [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au) in accordance with the instructions given there.

**TO BE VALID, YOUR PROXY FORMS MUST BE RECEIVED BY THE REGISTRY BY NO LATER THAN 3.00 pm ON 29 JANUARY 2011.**

By order of the board of CLIL

Suzanne Koeppenkastrop

Company Secretary

# Attachment B

## Deed Poll

---

**CK Life Sciences Int'l., Inc.** (incorporated in the  
British Virgin Islands with limited liability)

## Blake Dawson

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
T 61 2 9258 6000  
F 61 2 9258 6999

Reference  
SJD MES 02-2023-4004  
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## Deed Poll

**DATE** 14<sup>th</sup> December 2010

### **PARTIES**

**CK Life Sciences Int'l., Inc.** (incorporated in the British Virgin Islands with limited liability)  
**(CKLS)**

**In favour of each holder of fully paid ordinary units in the Challenger Wine Trust**  
**ARSN 092 960 060 (CWT)**

### **RECITALS**

- A. CKLS and Challenger Listed Investments Limited ABN 94 055 293 644 (CLIL) as responsible entity of Challenger Wine Trust ARSN 092 960 060 (CWT), have entered into an implementation agreement dated [-] November 2010 (**Implementation Agreement**) under which they each agree to take certain steps to implement the Scheme.
- B. In accordance with the Implementation Agreement, CKLS is entering into this document to covenant in favour of the Scheme Participants that it will observe and perform its obligations under the Scheme.

### **OPERATIVE PROVISIONS**

#### **1. DEFINITIONS AND INTERPRETATION**

---

##### **1.1 Definitions**

Terms that are not defined in this document and that are defined in the Implementation Agreement have the same meaning in this document as given to the term in the Implementation Agreement, unless the context makes it clear that a definition is not intended to apply.

##### **1.2 Rules for interpreting this document**

The rules for interpreting the Implementation Agreement set out in clause 1.2 and for non-Business Days set out in clause 1.3 of the Implementation Agreement apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

#### **2. CONDITIONS AND TERMINATION**

---

##### **2.1 Termination**

CKLS's obligations under this document terminate automatically upon the termination of the Implementation Agreement or if the Conditions have not been satisfied or waived in accordance with clause 3.3 of the Implementation Agreement by the End Date.

##### **2.2 Consequences of Termination**

If this document is terminated under clause 2.1 then, in addition and without prejudice to any other rights, powers or remedies available to it:

Blake Dawson

- (a) CKLS is released from its obligations under this document except those obligations under clause 6; and
- (b) each Scheme Participant retains any rights, powers or remedies that the Scheme Participant has against CKLS in respect of any breach of its obligations under this document that occurred before termination of this document.

### 3. COMPLIANCE WITH SCHEME OBLIGATIONS

#### 3.1 Payment of Transfer Price

Subject to the Supplemental Deed becoming Effective and the Conditions being fulfilled or waived under clause 3.3 of the Implementation Agreement, CKLS covenants to, or procure the CKLS Nominee to, accept the transfer of the Scheme Units and pay the Transfer Price for the Scheme Units, in accordance with clause 7 of the Implementation Agreement.

#### 3.2 Scheme Implementation

CKLS will do all things that it is required to do under the Implementation Agreement to implement the Scheme.

#### 3.3 Supplementary Information

CKLS will provide supplementary information to ASX (with a copy to ASIC) if it becomes aware of any of the following matters between the Scheme Booklet Despatch Date and the Meeting Date:

- (a) a statement in the CKLS Information that is misleading or deceptive;
- (b) an omission from the CKLS Information of information required by the Corporations Act or Guidance Note 15 to be included in the CKLS Information; and
- (c) a new circumstance relevant to CKLS or the CKLS Information which, had it arisen prior to the Scheme Booklet Despatch Date, would have been required to be included in the Scheme Booklet at the Scheme Booklet Despatch Date

that is material from the point of view of a CWT unitholder.

#### 3.4 Acquisition of CWT Units

CKLS will not, and will procure that its associates (as defined in section 12(2) of the Corporations Act) will not, acquire CWT Units other than via the Scheme until the earlier of:

- (a) the Scheme being implemented;
- (b) one or both of the Scheme Resolutions not being approved by Scheme Participants at the Meeting; or
- (c) the termination of the Implementation Agreement.

#### 3.5 Compliance with various takeover provisions of the Corporations Act

CKLS undertakes that, subject to any differential treatment of Scheme Participants which is inherent in the Scheme, the Scheme will as far as practicable comply with the following sections of the Corporations Act as they would apply if CKLS were making a takeover bid for CWT on similar terms:

- (a) subsection 618(1) and section 619;

- (b) subsections 621(3), (4) and (5) as modified by ASIC class order 00/2338;
- (c) sections 622, 623, 627, 628 and 651A.

For the purposes of this clause the Scheme Booklet Despatch Date will be:

- (a) the date of the bid for the purposes of applying subsection 621(3), (4) and (5) of the Corporations Act; and
- (b) the first date of the bid period (which will end immediately after the Scheme Meeting) for the purposes of applying section 623 of the Corporations Act.

### 3.6 Further Assurances

CKLS must on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Participant, execute all documents and take all necessary action within its power as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

## 4. WARRANTIES

CKLS represents and warrants that:

- (a) **(status)** it is a company limited by shares under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own its property and to carry on its business; and
  - (ii) enter into this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out the transactions this document contemplates;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditor's rights generally) subject to any necessary stamping; and
- (e) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene its constitution or any other constituent documents.



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**5. NATURE OF DEED POLL**

---

**5.1 Reliance**

CKLS acknowledges that this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it.

**5.2 Appointment of Agent**

Under the Scheme, each Scheme Participant appoints CLIL as its agent and attorney to enforce this document against CKLS on behalf of that Scheme Participant.

**5.3 Continuing obligations**

This document is irrevocable and, subject to clause 2, remains in full force and effect until CKLS has completely performed its obligations under this document or the earlier termination of this document under clause 2.

---

**6. STAMP DUTY**

---

- (a) CKLS must pay for all stamp duty payable on this document and any stamp duty payable on, or in respect of, the transfer of the Scheme Units to CKLS (or the CKLS Nominee) pursuant to the Implementation Agreement.
- (b) CKLS must indemnify each Scheme Participant on demand against any liability they may have for stamp duty (including any related fines, penalties and interest) in connection with implementation of the Scheme.

---

**7. AMENDMENT AND ASSIGNMENT**

---

**7.1 Amendment**

A provision of this document may not be varied unless:

- (a) the variation is agreed to in writing by CLIL; and
- (b) CKLS enters into a further deed poll in favour of Scheme Participants giving effect to that amendment.

**7.2 Assignment**

The rights and obligations of a person under this document are personal. They cannot be assigned, encumbered, charged or otherwise dealt with, and no person shall attempt or purport to do so.

---

**8. GENERAL**

---

**8.1 Governing law**

- (a) This document is governed by the law in force in New South Wales.
- (b) CKLS submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

**8.2 Liability for expenses**

CKLS must pay its own expenses incurred in negotiating, executing, and registering this document.

**8.3 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

**8.4 Operation of this document**

- (a) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

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EXECUTED as a deed poll.

EXECUTED by CK Life Sciences Int'l,  
Inc. (incorporated in the British Virgin  
Islands with limited liability):



Signature of director

ALAN YU

Name



Signature of director/secretary

JERRY MO

Name



# Attachment C

## Implementation Agreement

---

**Challenger Listed Investments Limited**  
ABN 94 055 293 644 **as responsible entity of**  
**Challenger Wine Trust** ARSN 092 960 060

**CK Life Sciences Int'l., Inc.**  
(incorporated in the British Virgin Islands with limited  
liability)

### Blake Dawson

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
T 61 2 9258 6000  
F 61 2 9258 6999

**Reference**  
SJD MES 02-2023-4904  
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Corporate/571032\_1

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## Implementation Agreement

DATE 7 November 2010

### PARTIES

**Challenger Listed Investments Limited** ABN 94 055 293 644 (**CLIL**) as responsible entity of **Challenger Wine Trust** ARSN 092 960 060 (**CWT**)

**CK Life Sciences Int'l, Inc.** (incorporated in the British Virgin Islands with limited liability) (**CKLS**)

### RECITAL

- A. CKLS proposes to acquire by way of the Scheme 137,837,287 issued units in CWT, being all of the issued units in CWT other than those held (or to be held) by or on behalf of the CLC Group.
- B. CLIL has agreed to propose the Scheme and issue the Scheme Booklet at the request of CKLS, and CLIL and CKLS have agreed to implement the Scheme on the terms and conditions of this document.
- C. The Securityholders Deed and the Management Deed were entered into before the date of this document and each of those deeds will take effect if the Scheme is implemented.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this document:

**Affiliate** of any person means any other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person; and **control** (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise.

**Aggregate Scheme Consideration** means the Transfer Price multiplied by the number of Scheme Units.

**Agreed Announcements** means the Announcements to be made by CLIL to ASX and by CKLS to HKEX announcing the Proposal in the forms agreed by the parties.

**Announcement** means a press release, announcement or other public statement.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Modification** means a modification of item 7 of section 611 of the Corporations Act, to allow CWT Unitholders other than CKLS and CLC and each of their associates (unless the associate is a custodian, nominee, trustee, responsible entity or other fiduciary which has received a specific instruction from a third party beneficiary, who is not an associate of

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CKLS or CLC, directing the associate how to vote) to vote in favour of the Scheme for the purpose of item 7 of section 611 of the Corporations Act.

**ASX** means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

**Budget** means, subject to the assumptions in the explanatory notes and key assumptions, the CWT *Budget for the year ending 30 June 2011* dated August 2010 included in the Disclosure Materials.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

**CLC** means Challenger Life Company Limited ABN 44 072 486 938

**Claim** means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**CKLS Group** means CKLS and its related bodies corporate and **CKLS Group Member** means any one of them.

**CKLS Information** means:

- (a) the information CKLS has provided to CLIL for inclusion in the Scheme Booklet, including information as to the funding arrangements it has made to provide the monies for the Transfer Price per Scheme Unit and information as to CKLS's opinions, views, intentions, and decisions in relation to CWT; and
- (b) the information the CLC Group has provided CKLS, including information regarding:
  - (i) the CLC Group's business operations;
  - (ii) the CLC Group's holding of CWT Units; and
  - (iii) future matters involving the CLC Group's proposal with respect to CWT, including any matters set out in the Securityholders Deed,

and any information derived from, or prepared solely in reliance on, the matters set out in paragraphs (i) to (iii) above.

**CKLS Nominee** means a wholly owned subsidiary of CK Life Sciences Int'l., (Holdings) Inc.

**CLC Group** means CLC and its controlled entities and **CLC Group Member** means any one of them.

**CLIL Board** means the board of directors of CLIL (in its capacity as responsible entity of CWT).



**CLIL Director** means a director on the CLIL Board.

**CLIL Management Team** means Tim Evans, Nick Gill, Melissa Watson, Dane Rennie, Natalie Breen, Michael Vardanega, Mark Simons, Anita Yeung, Jane Coomer, Gavin Buchanan, Andrew Brown, Suzie Koeppenkastrop and Luke Keighery and Jeffrey Lum, and any other person employed by or who devotes substantially all of their time to representing CLIL in its dealings on behalf of CWT.

**Competing Proposal** means any expression of interest, proposal, offer, transaction or arrangement (other than the Proposal) by or with any person pursuant to which, if the indicative non-binding offer, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a Third Party will (other than as custodian, nominee or bare trustee):
  - (i) acquire an interest in, or a relevant interest in or become the holder of, 50% or more of the CWT Units;
  - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all, or a substantial part of, the assets or business of CWT;
  - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of CWT; or
  - (iv) otherwise directly or indirectly acquire, merge or amalgamate with CWT or a substantial part of its assets or business, whether by way of takeover offer, trust scheme, unitholder approval acquisition, capital reduction, unit buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for CWT or other synthetic merger or any other transaction or arrangement; or
- (b) CWT would be required to abandon or otherwise fail to proceed with the Scheme or the Proposal, by whatever means.

**Condition** means a condition precedent in clause 3.2.

**Conditions Satisfaction Date** means the date on which the last of the Conditions is satisfied or waived under clause 3.3.

**Confidentiality Agreement** means the confidentiality deed poll by CK Life Sciences Int'l., Inc. dated 18 August 2010.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified in respect of CWT or the Scheme.

**CWT Constitution** means the constitution establishing CWT, as amended from time to time.

**CWT Information** means all information in the Scheme Booklet or otherwise provided to CWT Unitholders in connection with the Scheme, other than the CKLS Information.

**CWT Unitholder** means a person who is registered as the holder of a CWT Unit in the CWT Unit Register from time to time.

**CWT Unit Register** means the register of holders of CWT Units from time to time, as administered by CLIL.

**CWT Unit** means an ordinary unit on issue in CWT.

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**Deed Poll** means a document substantially in the form of Schedule 3 under which CKLS covenants in favour of Scheme Participants to perform its obligations under this document.

**Disclosure Material** means:

- (a) the due diligence information disclosed by or on behalf of CWT to CKLS, via the electronic dataroom hosted by CLIL or through electronic mail, at the request of CKLS or otherwise pursuant to the Confidentiality Agreement; and
- (b) information available on the Public Registers on or before the date of the document.

**Effective** means the coming into effect of the Supplemental Deed pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which CLIL lodges the Supplemental Deed with ASIC.

**End Date** means 30 June 2011, subject to any extension under clause 3.5.

**Exclusivity Period** means the period from the date of this document until the earlier of:

- (a) the Implementation Date;
- (b) the End Date; and
- (c) termination of this document.

**Existing Management Agreement** means the management agreement between CLIL and Challenger Management Services Limited dated 12 April 2006.

**Expected OIO Approval Date** means 31 March 2011.

**Government Agency** means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including ASIC and any self-regulatory organisation established under statute or by ASX.

**GST** means the same as in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guidance Note 15** means *Guidance Note 15: Listed Trusts and Managed Investment Scheme Mergers* issued by the Takeovers Panel of Australia.

**HKEX** means the Hong Kong Stock Exchange.

**Implementation Date** means the date which is 2 Business Days after the Record Date or such other date as the parties agree in writing.

**Independent Directors** means each of Ms Brenda Shanahan, Mr Ian Martens, Mr Geoffrey McWilliam, Mr Michael Cole and Mr Ian Moore.

**Independent Expert** means KPMG Corporate Finance (Aust) Pty Ltd ABN 43 007 363 215.

**Independent Expert's Report** means the report prepared by the Independent Expert stating whether or not, in his or her opinion:

- (a) the Scheme is fair and reasonable for the CWT Unitholders not associated with CKLS; and

- (b) the Scheme is in the best interests of the CWT Unitholders, not associated with CKLS.

**Insolvency Event** means, in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (b) **(arrangements)**
- (i) the entry by the person into a compromise or arrangement with its creditors generally or, if it is a trustee, the creditors of its trust generally; or
  - (ii) the person executes a deed of company arrangement;
- (c) **(winding up)**
- (i) a court makes an order for the winding up of the person; or
  - (ii) the making of an application or order for the winding up or dissolution of the person, other than where the application or order (as the case may be) is set aside within 14 days;
- (d) **(statutory demand)** being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) **(suspends payments)** the person suspends or threatens to suspend payment of its debts or, if it is a trustee, the debts of the trust;
- (f) **(insolvency)** the person is or becomes unable to pay its debts or, if it is a trustee, the debts of its trust, as and when they fall due within the meaning of the Corporations Act or is (or if it is a trustee, its trust is) otherwise presumed to be insolvent under the Corporations Act; or
- (g) **(analogous event)** any analogous event occurring in relation to that person under the laws of another jurisdiction,

provided that any event or circumstance in respect of a person which is fairly disclosed to CKLS in the Disclosure Materials will not constitute an Insolvency Event in respect of that person for the purposes of this document.

**Listing Rules** means the Listing Rules of ASX as waived or modified in respect of CWT or the Scheme.

**Loss** includes any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Main Board Listing Rules** means the official listing rules of the Main Board of HKEX as from time to time amended or waived in their application to a party.

**Manager** means Challenger Management Services Limited (ABN 29 092 382 842).

**Management Deed** means the deed dated on or about the date of this deed entered into between Belvino Investments Pty Limited and the Manager relating to the management services to be provided to CWT and the Subtrusts after the Implementation Date.

**Material Adverse Change** means:

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- (a) from the date of this agreement up to and including midnight on the Meeting Date, any material adverse change of an ongoing nature to the business, financial position or results of operations or financial performance of CWT from the business, financial position or results of operations or financial performance of CWT existing at the date of this document;
- (b) from the time referred to in (a) up to and including the Expected OIO Approval Date, a natural disaster occurs which would result in the total payments received under all leases for the ensuing 3 years to be reduced by more than 25% of what the rental would have been had the natural disaster not occurred.

**Meeting Date** means the date on which the Scheme Meeting is held.

**Notice of Meeting** means the notice convening the Scheme Meeting together with proxy form for the Scheme Meeting.

**OIO** means the New Zealand Overseas Investment Office.

**OIO Approval** means all consents in writing required under the Overseas Investment Act 2005 (New Zealand) for the acquisition by CKLS of the Scheme Units.

**Prescribed Occurrence** means:

- (a) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) converts all or any of its securities into a larger or smaller number of securities;
- (b) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) reduces or resolves to reduce its capital in any way;
- (c) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust):
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option;
- (e) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) issues, or agrees to issue, convertible notes or any other security or instrument convertible into securities;
- (f) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business or property of CWT or that Subtrust;
- (g) CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust) disposes or agrees to dispose of the whole or a substantial part of its business or property;
- (h) an Insolvency Event occurs in relation to CWT or a Subtrust;
- (i) CLIL amends the CWT Constitution or the constitution or trust deed of a Subtrust in a material respect;

- (j) other than in the ordinary course of business and consistent with past practice or as set out in the Budget, CWT or a Subtrust (acting through CLIL as responsible entity of CWT or as trustee of that Subtrust):
  - (i) enters into any contract or commitment involving revenue or expenditure of more than \$250,000 over the term of the contract or commitment (other than any contract or commitment associated with the Proposal or renewing the Existing Management Agreement on substantially the same terms); or
  - (ii) terminates or amends in a material manner any contract material to the conduct of CWT's business or which involves expenditure or revenue of more than \$250,000 over the term or the contract (other than any contract or commitment associated with the Proposal or renewing the Existing Management Agreement on substantially the same terms);

but excluding any matter:

- (k) required to be done or procured by CLIL under this document or the Scheme;
- (l) which has previously been disclosed to ASX or which was fairly disclosed in the Disclosure Material; or
- (m) which involves a transaction between CWT and a Subtrust or between Subtrusts.

**Proposal** means the Scheme proposal pursuant to which CKLS (or the CKLS Nominee) will acquire the Scheme Units.

**Public Registers** means the records made available for public inspection by ASIC and ASX.

**Record Date** means 7 pm on the date that is 5 Business Days after the Condition Satisfaction Date or such other date as may be agreed by the parties in writing.

**Relevant Date** means, in relation to a Condition, the date or time specified in this document for its fulfilment or such later date or time as the parties agree in writing.

**Representative** means, in relation to a person:

- (a) a related body corporate; or
- (b) an officer of the person or any of the person's related bodies corporate; or
- (c) any financier, financial adviser, corporate adviser or legal adviser who provides advisory services in a professional capacity to the market in general and who has been engaged by that person or any of that person's related bodies corporate.

**Responsibility Statement** means the statement that is to be included in the Scheme Booklet in the form set out in Schedule 4.

**Scheme** means the arrangement, in accordance with Guidance Note 15, under which CKLS (or the CKLS Nominee) acquires all of the Scheme Units that is facilitated by amendments to the CWT Constitution as set out in the Supplemental Deed, subject to the Scheme Resolutions being approved by the requisite majorities of CWT Unitholders.

**Scheme Booklet** means the explanatory memorandum to be prepared by CLIL in respect of the Scheme including the Independent Expert's Report, the Notice of Meeting, this document, the Supplemental Deed and the Deed Poll.

**Scheme Meeting** means the general meeting of CWT Unitholders to be held to consider and, if thought fit, to approve the Scheme Resolutions.



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**Scheme Participants** means each person registered as the holder of a Scheme Unit on the Record Date.

**Scheme Resolutions** means resolutions of CWT Unitholders to approve the Scheme including:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the steps required to implement the Scheme;
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve the amendments to the CWT Constitution as set out in the Supplemental Deed and to authorise CLIL to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments.

**Scheme Unit** means a CWT Unit on issue on the Record Date (other than any units held by or on behalf of the CLC Group).

**Securityholders Deed** means the deed dated on or about the date of this agreement between LANV Pty Ltd, Belvino Investments Pty Limited and Regenal Investments Pty Limited to govern the arrangements between the parties.

**Securityholders Deed Resolution** means the ordinary resolution of CWT Unitholders for the purpose of item 7 of section 611 of the Corporations Act, to approve the terms of the Securityholders' Deed in so far as that agreement would, but for the approval, constitute an acquisition by CKLS of a relevant interest in CWT Units held by the CLC Group.

**Subtrust** means:

- (a) the McGuigan Simeon Trust (ABN 76 965 280 510);
- (b) the Southcorp Trust (ABN 12 433 418 162); and
- (c) the Delegats Trust (ABN 94 875 863 600),

each wholly owned by CWT.

**Superior Proposal** means a bona fide Competing Proposal that the Independent Directors determine, acting in good faith and in order to satisfy what the Independent Directors consider to be their fiduciary or statutory duties (and after having obtained advice from their financial and legal advisers):

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the CWT Unitholders than the Proposal, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal.

**Supplemental Deed** means a deed poll pursuant to which CLIL (in its capacity as responsible entity of CWT) will amend the CWT Constitution, the form of which is set out in Schedule 1, with any alterations or amendments approved in writing by CLIL and CKLS.

**Third Party** means a person other than a CKLS Group Member.

**Timetable** means the indicative timetable in relation to the Scheme, as set out in Schedule 3, or such other indicative timetable as may be agreed in writing by the parties.



**Transfer Price** means \$0.24 per Scheme Unit.

## 1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) When used in the lower case, the words **associate, control, controller, entity, officer, related body corporate, relevant interest** and **subsidiary** have the same meaning as in section 9 the Corporations Act.
- (g) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) A reference to **\$, dollar** or cent is to Australian currency.
- (i) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (j) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (k) Words defined in the GST Law have the same meaning in clauses concerning GST.
- (l) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which

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the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

- (m) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (n) A reference to time in this document is a reference to the time in Sydney, New South Wales.

### 1.3 Non-Business Days

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

## 2. SCHEME

### 2.1 Scheme

CLIL agrees to propose and implement the Scheme on and subject to the terms and conditions of this document, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.

### 2.2 CKLS to assist

CKLS agrees to assist CLIL in proposing and implementing the Scheme on and subject to the terms and conditions of this document, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.

## 3. CONDITIONS

### 3.1 Obligations not binding until Conditions satisfied

Subject to this clause 3, the obligations of CLIL under clause 7.1 do not become binding until the Conditions are satisfied or waived under clause 3.3.

### 3.2 Conditions

The Conditions are:

- (a) **(ASIC Modification)** before the Meeting Date ASIC has granted the ASIC Modification or, in respect of any ASIC Modification which has not been granted, has indicated in writing that such a modification is not required;
- (b) **(Independent Expert's Report)** the Independent Expert's Report concludes that the Scheme is in the best interests of the CWT Unitholders;
- (c) **(CWT Unitholder approval)** the Scheme Resolutions and the Securityholders Deed Resolution are approved at the Scheme Meeting by the requisite majorities of the CWT Unitholders under the Corporations Act and in accordance with Guidance Note 15 before the expiry of 3 months from the date of this agreement;

- (d) **(no Prescribed Occurrence)** from the date of this document until 8.00am on the Meeting Date there is no Prescribed Occurrence;
- (e) **(OIO Approval)** CKLS obtaining OIO Approval which is subject only to customary conditions or conditions that CKLS has agreed to in its application; and
- (f) **(no Material Adverse Change)**
  - (i) from the date of this document until midnight on the Meeting Date, there is no Material Adverse Change of the nature described in paragraph (a) of the definition of Material Adverse Change; or
  - (ii) from midnight on the Meeting Date until the Expected OIO Approval Date, there is no Material Adverse Change of the nature described in paragraph (b) of the definition of Material Adverse Change.

**3.3 Waiver of a Condition**

- (a) The following Conditions are for the benefit of the following party or parties:

Condition	Party
3.2(a), 3.2(c), 3.2(e)	CLIL and CKLS
3.2(b)	CLIL
3.2(d), 3.2(f),	CKLS

- (b) If a Condition has been included for the benefit of one party only, only that party may, in its sole and absolute discretion, waive the breach or non-fulfilment of the Condition (except that a party must not waive a Condition if it would result in a breach of law).
- (c) If a Condition has been included for the benefit of more than one party, the breach or non-fulfilment of the Condition may be waived only by the consent of all those parties.
- (d) The breach or non-fulfilment of a Condition may only be waived in writing.
- (e) Waiver of the breach or non-fulfilment of a Condition does not:
  - (i) affect the party's right to bring a claim against the other party for any breach of this document; or
  - (ii) constitute a waiver of the breach or non-fulfilment of any other Condition.

**3.4 Fulfilment of each Condition**

Each party must:

- (a) use its reasonable endeavours (other than waiver) to ensure and procure that each Condition is satisfied as soon as practicable after the date of this document and in any event on or prior to any Relevant Date;
- (b) not take any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other party;
- (c) keep the other party informed of:

- (i) any failure to satisfy a Condition; and
  - (ii) any circumstances which may result in any of the Conditions not being satisfied in accordance with its terms; and
- (d) promptly advise the other party of the satisfaction of a Condition.

### 3.5 If a Condition is not fulfilled or waived

If a Condition has not been fulfilled or waived by the Relevant Date (or if an event occurs which would prevent a Condition being satisfied by the Relevant Date), or the Supplemental Deed has not become Effective by the End Date, a party may by notice in writing to the other party terminate this document without any liability to the other party by reason of that termination alone but without limiting either party's rights in respect of a breach of this document prior to its termination.

## 4. CONDUCT OF BUSINESS BEFORE IMPLEMENTATION DATE

### 4.1 Conduct in the ordinary course

From the date of this document up to and including the Implementation Date, CLIL must procure that CWT conducts its business in the ordinary course, in substantially the same manner and a manner which is lawful in all material respects and at the same locations as previously conducted and, to the extent consistent, use reasonable efforts to:

- (a) preserve intact its current business organisation;
- (b) keep available the services of its current officers and employees;
- (c) preserve its relationship with all of its material customers, suppliers, licensors, licensees and others having material business dealings with it; and
- (d) maintain its business and assets, including maintaining at least its current level of insurance,

provided that this clause 4.1 shall not prevent CLIL from taking any proposed course of action the details of which have been fairly disclosed to CKLS in the Disclosure Materials.

### 4.2 Distribution

CLIL undertakes that CWT will not make any distribution to CWT Unitholders for the 6 months ending on 31 December 2010 or otherwise.

## 5. UNDERTAKINGS

### 5.1 CLIL's obligations

CLIL must, as expeditiously as practicable and having regard to the Timetable:

- (a) **(commission Independent Expert's Report)** commission the preparation of the Independent Expert's Report and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **(provide Independent Expert's Report)** once it has received a draft of the Independent Expert's Report incorporating its comments, provide CKLS with a copy of that draft to enable CKLS to comment on the factual accuracy of any CKLS

Information included in the Independent Expert's Report, consult with CKLS in relation to the content of that draft and (acting reasonably and in good faith) take into account, for the purpose of amending that draft, any comments from CKLS and its Representatives;

- (c) **(prepare Scheme Booklet)** prepare the Scheme Booklet in accordance with clause 6;
- (d) **(liaison with ASIC)** provide an advanced draft of the Scheme Booklet to ASIC for its review and approval and keep CKLS informed of any matter raised by ASIC in relation to the draft Scheme Booklet (and of any resolution of those matters);
- (e) **(ASX confirmation)** seek confirmation from ASX under Listing Rule 15.1 that it does not object to the proposed amendments to the CWT Constitution as set out in the Supplemental Deed or the Scheme Booklet;
- (f) **(approval of Scheme Booklet)** procure that a meeting of the Independent Directors is convened to approve the Scheme Booklet for despatch to CWT Unitholders;
- (g) **(Scheme Meeting)** convene the Scheme Meeting to be held on 28 January 2011, despatch the Scheme Booklet to CWT Unitholders on the Scheme Booklet Despatch Date and hold the Scheme Meeting and put the Scheme Resolutions to CWT Unitholders at the Scheme Meeting, in each case taking all reasonable steps necessary to comply with Guidance Note 15, the CWT Constitution, the Corporations Act and the Listing Rules (as applicable); and
- (h) **(Hong Kong requirements)** provide all necessary assistance, and information about CWT and the Scheme, to CKLS which CKLS reasonably requires in order to:
  - (i) prepare a circular about the Scheme to be provided to CKLS's parent company shareholders; and
  - (ii) otherwise comply with the requirements of HKEX, the Main Board Listing Rules and all applicable laws in Hong Kong in relation to the Scheme.

## 5.2 CKLS's obligations

CKLS must:

- (a) **(Hong Kong requirements)** as expeditiously as practicable:
  - (i) make available to CLIL drafts of the circular to be provided to CKLS's parent company shareholders, consult with CLIL in relation to the content of those drafts (including the inclusion of any information relating to CWT or the Scheme), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from CLIL and its Representatives (such comments must be provided to CKLS promptly after having received drafts) on those drafts; and
  - (ii) consult CLIL in advance in relation to all communications (whether written or oral, and whether direct or through agents or advisers) with HKEX in relation to the Scheme and keep CLIL fully informed in relation to the satisfaction of the HKEX regulatory requirements in respect of the acquisition by CKLS of the Scheme Units under the Scheme;
- (b) **(OIO Approval)** as soon as reasonably practicable after the date of this document, apply to OIO for the OIO Approval and consult CLIL in advance in relation to all

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- communications (whether written or oral, and whether direct or through agents or advisers) with the OIO in relation to the Scheme and keep CLIL fully informed in relation to progress towards obtaining the OIO Approval;
- (c) **(ASIC modification)** as soon as reasonably practicable after the date of this document, apply to ASIC for the ASIC Modification (unless ASIC requires CLIL to make the application, in which case CLIL must apply to ASIC for the ASIC Modification);
- (d) **(assist preparation of Independent Expert's Report)** as expeditiously as practicable, provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(preparation of Scheme Booklet)** provide all assistance with the preparation and verification of the Scheme Booklet in accordance with clause 6;
- (f) **(approval of Scheme Booklet)** as expeditiously as practicable procure that a meeting of CKLS's board is convened to approve:
- (i) those sections of the Scheme Booklet that comprise CKLS Information as being in a form appropriate for despatch to CWT Unitholders; and
  - (ii) consenting in writing to the despatch of that information in that form to CWT Unitholders,
- (and provide CLIL with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed); and
- (g) **(Deed Poll)** before the despatch of the Scheme Booklet, enter into the Deed Poll.

### 5.3 Implementation Committee

From the date of execution of this document until the Implementation Date, an implementation committee made up of up to:

- (a) 2 executives or advisers representing CLIL; and
- (b) 2 executives or advisers representing CKLS,

will be constituted (Implementation Committee). The role of the Implementation Committee will be to act as a forum for consultation and planning between the parties in relation to the implementation of the Scheme.

The Implementation Committee will meet (in person or by telephone) within 3 Business Days of the date of this document and will agree on subsequent dates for meetings between the date of this document and the Implementation Date, but in any event more than fortnightly, unless mutually agreed.

## 6. PREPARATION OF SCHEME BOOKLET

### 6.1 CLIL to prepare Scheme Booklet

Subject to CKLS complying with its obligations under clause 6.4, CLIL must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this document and otherwise having regard to the Timetable.



**6.2 Compliance requirements**

CLIL must ensure that the Scheme Booklet complies with all applicable laws and regulatory guidance, in particular the requirements of the Corporations Act, the Listing Rules, Guidance Note 15 and all applicable ASIC Regulatory Guides, except that the obligation to do so in respect of the CKLS Information is subject to CKLS complying with its obligations under clause 6.4.

**6.3 Responsibility Statement**

Without limiting clause 6.2, the Scheme Booklet must include the Responsibility Statement.

**6.4 CKLS Information**

CKLS must provide the CKLS Information to CLIL as soon as is reasonably practicable after the date of this document and otherwise having regard to the Timetable, in a form that includes all information regarding the CKLS Group that is required by all applicable laws and regulatory guidance including the Corporations Act, the Listing Rules, Guidance Note 15 and all relevant ASIC Regulatory Guides and must provide to CLIL such assistance as CLIL may reasonably require in order to adapt such information for inclusion in the Scheme Booklet.

**6.5 Review by CKLS**

CLIL must make available to CKLS drafts of the Scheme Booklet, consult with CKLS in relation to the content of those drafts (including the inclusion of any CKLS Information and any information solely derived from, or prepared solely in reliance on, the CKLS Information), and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from CKLS and its Representatives on those drafts.

**6.6 Dispute as to Scheme Booklet**

If, after a reasonable period of consultation and compliance by CLIL with its obligations under clause 6.5, CKLS and CLIL, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the CKLS Information (or any information solely derived from, or prepared solely in reliance on, the CKLS Information), CLIL will, acting in good faith and acting reasonably, make such amendments to that information in the Scheme Booklet as CKLS may reasonably require; and
- (b) if the disagreement relates to the form or content of the CLIL Information, CLIL will, acting in good faith, decide the final form of that information in the Scheme Booklet.

**6.7 Consent of CKLS**

Without limiting clause 6.6, CKLS must provide written consent to CLIL in relation to the form and context in which any CKLS Information (and any information solely derived from, or prepared solely in reliance on, the CKLS Information) is included in the Scheme Booklet.

**6.8 Verification**

CLIL must undertake appropriate verification processes in relation to the CLIL Information included in the Scheme Booklet, and CKLS must undertake appropriate verification processes in relation to the CKLS Information in the Scheme Booklet.

## 6.9 Updating Scheme Booklet

Each party must ensure that those parts of the Scheme Booklet for which the party is responsible are updated with any information of which the party becomes aware between the Scheme Booklet Despatch Date and the Meeting Date that is necessary to ensure that the Scheme Booklet is not misleading or deceptive or likely to mislead or deceive in any material respect and complies with all applicable laws, ASIC policy, Takeovers Panel guidance notes and the Listing Rules.

## 7. IMPLEMENTATION OF SCHEME

### 7.1 CLIL's obligations

If the Scheme Resolutions are passed by their requisite majorities at the Scheme Meeting, CLIL must:

- (a) within 1 Business Day after the Meeting Date:
  - (i) execute the Supplemental Deed;
  - (ii) lodge the executed Supplemental Deed with ASIC; and
  - (iii) if requested by ASIC under section 601GC(3) of the Corporations Act, lodge with ASIC a consolidated copy of the CWT Constitution (as amended by the Supplemental Deed);
- (b) lodge all other notices and forms required by law or the Listing Rules to be lodged with ASIC or the ASX in relation to the Scheme Resolutions;
- (c) close the CWT Unit Register as at the Record Date and subject to clause 7.3, determine the identity of Scheme Participants and their entitlements under clause 7.1(e) to the Transfer Price per Scheme Unit;
- (d) as soon as practicable after the Record Date and in any event before the Implementation Date, subject to clause 7.3, give to CKLS details of the names, registered addresses and holdings of Scheme Units of every Scheme Participant;
- (e) provided CKLS has complied with its obligations under clause 7.2(a), on the Implementation Date promptly execute and deliver to CKLS proper instruments of transfer of, and register all transfers of, the Scheme Units to CKLS (or the CKLS Nominee if directed to do so by CKLS) in accordance with the Supplemental Deed;
- (f) provided CKLS has complied with its obligations under clause 7.2(a) on the Implementation Date, within 3 Business Days after the Implementation Date, pay to each Scheme Participant the Transfer Price per Scheme Unit held by that Scheme Participant at the Record Date, and such amounts must be paid to each Scheme Participant either by:
  - (i) electronic funds transfer to an account nominated by the Scheme Participant; or
  - (ii) cheque sent by pre-paid post:
    - (A) in the case of Scheme Participants who are registered as holding the Scheme Units jointly – the address recorded in the CWT Unit Register on the Record Date of the person whose name appears first in the CWT Unit Register in respect of the joint holding; and

- (B) otherwise – to the Scheme Participant's address recorded in the CWT Unit Register on the Record Date; and
- (g) promptly do all other things contemplated by or necessary to give effect to the foregoing matters in this clause 7.1 to effect the transfer of the Scheme Units to CKLS.

## **7.2 CKLS's obligations**

If the Supplemental Deed becomes Effective and all of the Conditions are satisfied or waived under 3.3, on the Implementation Date:

- (a) CKLS must, before 12.00 noon, satisfy its obligations to pay each Scheme Participant the Transfer Price in respect of each Scheme Unit registered in the name of that Scheme Participant by depositing in cleared funds an amount equal to the Aggregate Scheme Consideration into an account nominated by CLIL in accordance with this document, the Deed Poll and the Supplemental Deed; and
- (b) CKLS must accept, or must procure that the CKLS Nominee accepts, the transfer of the Scheme Units under the Scheme at the Transfer Price.

## **7.3 Delisting**

- (a) The parties must use reasonable endeavours to ensure that the ASX suspends trading in the CWT Units no later than the close of trading on the Effective Date.
- (b) CLIL must use its reasonable endeavours to maintain the listing of CWT until the Implementation Date and must not request ASX to delist CWT until after the Scheme Units are all registered in the name of CKLS or the CKLS Nominee, as the case may be.

## **8. ACCESS TO INFORMATION**

### **8.1 CLIL to give access to information**

From the date of this document and up to and including the Implementation Date, CLIL must give CKLS reasonable access to its records (subject to any existing confidentiality obligations owed to third parties), premises and personnel, and reasonable co-operation for the purpose of:

- (a) the implementation of the Scheme. This obligation does not require CLIL to provide information to CKLS concerning its directors' and management's consideration of the Scheme;
- (b) CKLS's understanding of the operations of CWT's business in order to allow and facilitate the smooth implementation of the plans of CKLS for that business following the Implementation Date; and
- (c) any other purpose which is agreed in writing between the parties,

subject to the proper performance by the directors and officers of CLIL and CLIL's subsidiaries of their fiduciary duties.

### **8.2 Information provided subject to confidentiality obligation**

All information provided under this document is subject to the terms of the Confidentiality Agreement.

## 9. BOARD RECOMMENDATIONS

### 9.1 Agreed Announcements

The Agreed Announcements must be issued by each of CLIL and CKLS following the execution of this document and must state (on the basis of written statements or resolutions made by the Independent Directors) that the Independent Directors unanimously recommend that CWT Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of the CWT Unitholders.

### 9.2 Independent Directors

CLIL must use its best endeavours to procure that the Independent Directors:

- (a) do not change, modify or withdraw their recommendations set out in the Agreed Announcements;
- (b) subject to the Independent Expert concluding that the Scheme is in the best interests of the CWT Unitholders, state in the Scheme Booklet that the Independent Directors unanimously recommend the Scheme and that CWT Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal, and do not change, modify or withdraw those recommendations once made; and
- (c) do not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so recommended,

unless:

- (d) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of the CWT Unitholders;
- (e) the Independent Directors determine in good faith and acting reasonably that a Competing Proposal constitutes a Superior Proposal; or
- (f) the Independent Directors have:
  - (i) first consulted with CKLS as to the matters, occurrences or events that would give rise to their consideration of the change, modification or withdrawal of their recommendation; and
  - (ii) acting reasonably and in good faith determined that they are justified or required to change, modify or withdraw their recommendation in accordance with the proper exercise of their fiduciary or statutory duties.

### 9.3 Independent Director intentions

The Scheme Booklet despatched to CWT Unitholders must state that each Independent Director who holds CWT Units, or who has control over voting rights attaching to CWT Units, intends to vote those CWT Units in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of the CWT Unitholders.

### 9.4 Independent Director voting

CLIL must use its best endeavours to ensure that each Independent Director who holds CWT Units, or who has control over voting rights attaching to CWT Units:

(a) intends to vote those CWT Units in favour of the Scheme Resolutions; and

(b) does not change that voting intention,

unless the Independent Directors change, modify or withdraw their recommendations as permitted under clause 9.2.

## 10. ANNOUNCEMENT

### 10.1 No Announcement

Neither party may make an Announcement relating to the subject matter of this document or its termination or make public this document (or any of its terms) unless the Announcement or publication:

(a) is required by this document;

(b) has the prior approval of the other party/parties; or

(c) is required to be made by any applicable law, the Listing Rules, the Main Board Listing Rules or any other applicable stock exchange regulation.

### 10.2 Notice of Announcement

If a party is required to make an Announcement under clause 10.1(c) or make any disclosure relating to the subject matter of this document, it must, to the extent practicable without that party breaking any applicable law, give to the other party:

(a) such notice as is reasonable in the circumstances of its intention to make the Announcement or disclosure; and

(b) a draft of the Announcement and an opportunity, which is reasonable in the circumstances, to comment on the contents of the draft Announcement or disclosure.

Subject to clause 5.2(a), CLIL acknowledges that where CKLS is required by the HKEX to makes alterations to an Announcement, CKLS will submit the revised Announcement to CLIL at the same time as to the HKEX.

## 11. TERMINATION

### 11.1 When a party may terminate

A party may terminate this document at any time before the scheduled time for implementation of the Scheme on the Implementation Date by giving notice in writing to the other:

(a) **(failure of condition)** in accordance with clause 3.5;

(b) **(material breach)** if:

(i) at any time before the Implementation Date the other party is in material breach of any clause of this document;

(ii) the terminating party has given notice to the other party setting out the relevant breach and stating an intention to terminate; and

- (iii) to the extent that the breach is capable of remedy, the other party does not remedy the breach by the earlier of five Business Days after it receives the notice or the scheduled time for implementation of the Scheme on the Implementation Date.
- (c) (**orders**) if a temporary restraining order, preliminary or permanent injunction or other order is issued by any court of competent jurisdiction which would prevent implementation of the Scheme.

### 11.2 Termination by CKLS

Without limiting clause 11.1, CKLS may terminate this document at any time before the scheduled time for implementation of the Scheme on the Implementation Date by giving notice in writing to CLIL if:

- (a) there is a material breach of any of the representations and warranties in clauses 12.3;
- (b) a Prescribed Occurrence occurs;
- (c) the Independent Directors change, modify or withdraw their recommendation in relation to the Scheme.

### 11.3 Termination by CLIL

Without limiting clause 11.1, CLIL may terminate this document at any time before the scheduled time for implementation of the Scheme on the Implementation Date by notice to in writing to CKLS if:

- (a) CLC Group is not the holder of 52,922,555 CWT Units as at the Record Date (whether the legal title to those CWT Units are held by a member of the CLC Group or by a custodian on behalf of the CLC Group); or
- (b) there is a material breach of any of the representations and warranties in clauses 12.1; or
- (c) the Independent Directors change or withdraw their recommendation in relation to the Scheme in accordance with clause 9.2.

### 11.4 Effect of termination

- (a) If a party terminates this document pursuant to clause 11.1, 11.2 or 11.3, all obligations of the parties under this document, other than this clause, clauses 12 (Representations and warranties), 13 (Indemnities), 14 (Reimbursement of Costs), 15 (Release), 17 (GST), 18 (Notices), 20 (Amendment and Assignment) and 21 (General), immediately cease to be of further force or effect.
- (b) The termination of this document does not affect any Claim arising before this document is terminated, that a party may have against another party.

## 12. REPRESENTATIONS AND WARRANTIES

### 12.1 CKLS representations and warranties

CKLS represents and warrants to CLIL as at the date of this document, the Scheme Booklet Despatch Date, the Effective Date and the Implementation Date that:

- (a) (**status**) it and the CKLS Nominee is a corporation validly existing under the laws of its place of incorporation;



- (b) **(CKLS Nominee)** the CKLS Nominee is a wholly owned subsidiary of CK Life Sciences Int'l., (Holdings) Inc. the parent company of CKLS;
- (c) **(power)** it has full legal capacity and power to:
- (i) own its property and to carry on its business; and
  - (ii) enter into this document and to carry out the transactions that this document contemplates;
- (d) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out the transactions that this document contemplates;
- (e) **(CKLS Nominee corporate authority)** the CKLS Nominee has taken all corporate action that is necessary or desirable to authorise its carrying out the transactions that this document contemplates;
- (f) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
- (i) enable it to properly execute this document and to carry out the transactions that this document contemplates;
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
  - (iii) enable it to properly carry on its business,
- and, so far as it is aware (after making reasonable enquiries), it is complying with any conditions to which any Authorisation is subject;
- (g) **(CKLS Nominee Authorisations)** the CKLS Nominee holds each Authorisation that is necessary or desirable to:
- (i) enable it to carry out the transactions that this document contemplates; and
  - (ii) enable it to properly carry on its business,
- and, so far as it is aware (after making reasonable enquiries), it is complying with any conditions to which any Authorisation is subject;
- (h) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (i) **(no contravention)** neither the execution of this document by CKLS nor the carrying out by it of the transactions that this document contemplates by CKLS or the CKLS Nominee, does or will:
- (i) contravene any law to which any of them or any of their property is subject or any order of any Government Agency that is binding on any of them or any of their property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on any of them or any of their property; or
  - (iv) contravene any of their constitutions;

- (j) **(no Insolvency Event)** none of CKLS, its subsidiaries, the CKLS Nominee or CK Life Sciences Int'l., (Holdings) Inc. is affected by an Insolvency Event;
- (k) **(CKLS Information)** all CKLS Information given to CWT for inclusion in the Scheme Booklet:
  - (i) has been given in good faith and on the understanding that CLIL is relying on that information to prepare the Scheme Booklet and propose and implement the Scheme;
  - (ii) will be true and correct in all material respects as at the Scheme Booklet Despatch Date; and
  - (iii) is not misleading or deceptive or likely to mislead or deceive (whether by omission or otherwise) as at the Scheme Booklet Despatch Date;
- (l) **(terms of the Scheme)** the terms of this document and, in particular, the acquisition of the Scheme Units under Scheme, are appropriate for CKLS's objectives, financial situation and needs and the laws, rules and regulations binding upon it;
- (m) **(knowledge and experience)** it has the necessary knowledge and experience to evaluate and understand the financial, investment and other risks involved in acquiring the Scheme Units pursuant to the Scheme and in relation to CWT; and
- (n) **(risk)** it is fully aware of, and has considered, the risks associated with the transactions contemplated by this document and the acquisition of Scheme Units under the Scheme in deciding whether to enter into this document and acknowledges that an investment in the Scheme Units may result in the loss of its entire investment and represents and warrants that it has the financial ability to bear the economic risk.

## 12.2 CKLS acknowledgements

CKLS acknowledges and agrees that:

- (a) **(Confidentiality Agreement)** the Disclosure Materials were provided to it subject to the terms of the Confidentiality Agreement;
- (b) **(repayment of capital)** it is fully aware that neither CLIL nor any of its related bodies corporate guarantees the repayment of capital or the performance of CWT or makes any representations concerning these matters;
- (c) **(information received)** it has had access to all information necessary or appropriate in connection with the transactions contemplated by this document and the Scheme, and has made and relied upon its own assessment of CWT and the Scheme (including, without limitation, the particular tax consequences of the Scheme in light of its particular situation as well as any consequences arising under the laws of any other taxing jurisdiction) and decided to participate based on its own queries and professional advice;
- (d) **(warranties)** in entering into this document and in proceeding to the Implementation Date, it does not rely on any statement, representation, warranty, condition, forecast or other conduct which may have been made by or on behalf of Challenger, except the warranties set out in clause 12.3; and
- (e) **(recommendation)** nothing in this document, or in any other document provided to it by CLIL in connection with the transactions under this document constitutes a recommendation or financial product, legal, tax or investment advice.

### 12.3 CLIL representations and warranties

CLIL represents and warrants to CKLS as at the date of this document, the Scheme Booklet Despatch Date, the Effective Date and the Implementation Date that:

- (a) **(status)** CLIL is a company limited by shares under the Corporations Act;
- (b) **(status)** CWT is validly established and registered under Part 5C of the Corporations Act;
- (c) **(power)** CLIL has the power to enter into this document and to carry out the transactions that this document contemplates;
- (d) **(corporate authority)** CLIL has taken all corporate action that is necessary or desirable to authorise its entry into this document and its carrying out the transactions that this document contemplates (subject to satisfaction or, as appropriate, waiver of each Condition);
- (e) **(Authorisations)** CLIL holds each Authorisation that is necessary or desirable to:
  - (i) enable it to properly execute this document and to carry out the transactions that this document contemplates;
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
  - (iii) enable it to properly carry on its business,and so far as it is aware (after making reasonable enquiries) it is complying with any conditions to which any Authorisation is subject;
- (f) **(document effective)** this document constitutes CLIL's legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (g) **(no contravention)** neither CLIL's execution of this document nor the carrying out by CLIL of the transactions that this document contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene the CWT Constitution;
- (h) **(no Insolvency Event)** neither it or any of its subsidiaries is affected by an Insolvency Event;
- (i) **(CWT Information)** all CWT Information in the Scheme Booklet:
  - (i) has been included in good faith;
  - (ii) will be true and correct in all material respects as at the Scheme Booklet Despatch Date; and
  - (iii) is not misleading or deceptive, or likely to mislead or deceive (whether by omission or otherwise), as at the Scheme Booklet Despatch Date;

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- (j) **(securities on issue)** as at the date of this document, there are 190,759,842 CWT Units on issue; and
- (k) **(continuous disclosure)** it has complied in all material respects with the continuous disclosure obligations applicable to CWT under the Listing Rules and the Corporations Act.

#### **12.4 Reliance on representations and warranties**

Each party acknowledges that the other party has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in clause 12.1 and clause 12.3.

#### **12.5 Notifications**

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties that are made or repeated in clause 12.1 and clause 12.3.

#### **12.6 Separate Warranties**

Each representation and warranty is a separate warranty and representation and its meaning is not affected by any other representation or warranty.

### **13. INDEMNITIES**

#### **13.1 Indemnities by CKLS**

CKLS indemnifies CLIL, its directors, officers and employees against any Loss or Claim arising from or in connection with a breach by CKLS of any of the representations and warranties in clause 12.1.

#### **13.2 Indemnities by CLIL**

CLIL indemnifies CKLS, its directors, officers and employees against any Loss or Claim arising from or in connection with a breach by CLIL of any of its representations and warranties in clause 12.3.

### **14. REIMBURSEMENT OF COSTS**

#### **14.1 Acknowledgements**

- (a) CKLS acknowledges that, subject to the various conditions outlined in this document (including without limitation the approval of the Scheme Resolutions), CKLS agrees under this document to acquire all of the Scheme Units and CLIL has a right to require CKLS to do so on the terms of this document.
- (b) CLIL acknowledges that CKLS has incurred and will continue to incur significant costs in relation to the Proposal.
- (c) CKLS warrants that CLIL agreeing to this clause 14 is necessary to induce CKLS to agree, on the terms of this document, to acquire the Scheme Units and provide CLIL with a corresponding right to require CKLS to do so, in certain circumstances and on certain conditions as referred to in clause 14.1(a).

#### 14.2 Reimbursement of Costs

- (a) Subject to clause 14.3, CLIL agrees to reimburse CKLS for the actual external costs it has incurred in relation to the Proposal (**CKLS Costs**), subject to a maximum amount of \$330,000 (plus GST, if applicable) (the **Cost Reimbursement Payment**) if at any time before the Meeting Date any of the following occur and CKLS does not proceed to acquire all of the Scheme Units by the End Date:
- (i) a Superior Proposal is announced or open for acceptance and, whether before or within 3 months after the End Date, that Superior Proposal is completed substantially in accordance with its terms; or
  - (ii) the Independent Directors fail to make, or withdraw, a recommendation to CWT Unitholders to vote in favour of the Scheme Resolutions other than in circumstances where the Independent Expert has concluded that the Scheme is not in the best interests of the CWT Unitholders.
- (b) The payment of the Cost Reimbursement Payment by CLIL to CKLS provided for in this clause 14.2 must be made within ten Business Days after the receipt by CLIL of a written demand for payment from CKLS. The demand may only be made after the occurrence of the event referred to in clause 14.2(a). The obligation to reimburse under this clause 14.2 cannot be triggered more than once.
- (c) The parties agree that any Cost Reimbursement Payment payable under this clause 14.2 represents compensation to CKLS for having initially agreed, on the terms of this document, to acquire the Scheme Units and provide CLIL with a corresponding right to require CKLS to do so in certain circumstances and on certain conditions (as described in clause 14.1(a)), notwithstanding that those requisite circumstances have not occurred or requisite conditions have not been satisfied.

#### 14.3 Compliance with law

The payment of the Cost Reimbursement Payment by CLIL under this clause 14 is not required, or is refundable, to the extent that such reimbursement would be unlawful, involves a breach of director's duties or is found by the Takeovers Panel to constitute unacceptable circumstances.

#### 14.4 No other liability

CLIL shall have no liability whatsoever for any breach of this document which arises out of, or which relates to, the event or occurrence referred to in clause 14.2(a), other than for its liability to pay CKLS the Cost Reimbursement Payment under clause 14.2(a) (where that clause applies).

### 15. RESTRICTED ACTIONS

#### 15.1 Exclusivity

During the Exclusivity Period, CLIL must not and must ensure that:

- (a) each CLIL Director;
- (b) each member of the CLIL Management Team; and
- (c) each adviser of CLIL and each person mentioned in (a) and (b),

(together, **CWT Representatives**)

does not, except with the prior written consent of CKLS, directly or indirectly solicit, invite or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

#### **15.2 Notification of approaches**

If during the Exclusivity Period the CLIL Board receives a Competing Proposal that it determines to be a Superior Proposal, it must promptly notify CKLS.

#### **15.3 Exceptions to clause 15.1 and 15.2**

- (a) Nothing in this clause 15 prevents CLIL from:
- (i) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business;
  - (ii) responding to, entering into discussions and negotiations with, providing information to, or otherwise dealing with any Third Party who makes an unsolicited Competing Proposal;
- (b) CLIL is not required to comply with clause 15 to the extent that the Independent Directors, acting reasonably and in good faith, determine that it would be a breach of their fiduciary or statutory duties to do so.

#### **15.4 Acknowledgements**

CKLS has required CLIL to agree to the obligations set out in this clause 15 in consideration of its proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations from CLIL, CKLS would not have entered into this document.

### **16. RELEASE**

- (a) Subject to section 199A of the Corporations Act and clause 16(b), no officer or employee of a party, is liable for anything done or purported to be done in connection with the implementation of the Scheme.
- (b) Clause 16(a) does not exclude an officer or employee from any liability which may arise from wilful misconduct or a negligent act or omission on the part of the person.
- (c) Each party receives and holds the benefit of this release, to the extent that it relates, to its officers and employees, as agent for them.

### **17. GST**

#### **17.1 GST payable in addition to consideration for taxable supplies**

A recipient of a taxable supply made under or in connection with this document must:

- (a) pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply, without deduction or set-off of any other amount; and



- (b) make the payment either when the consideration for the taxable supply is payable, or upon demand.

#### **17.2 Tax Invoice**

The supplier must issue a tax invoice to the recipient for any supply for which the supplier may recover GST from the recipient under or in connection with this document.

#### **17.3 Consideration exclusive of GST**

Any consideration or payment obligation in this document is exclusive of GST unless stated otherwise.

#### **17.4 Reimbursement of costs etc**

Any payment or reimbursement required to be made under this document that is by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit and/or reduced input tax credit to which an entity is entitled for the acquisition of the supply to which the cost, expense or amount relates.

### **18. NOTICES**

#### **18.1 How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

#### **18.2 When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if it is sent by mail:
  - (iii) within Australia – 3 Business Days after posting; or
  - (iv) to or from a place outside Australia – 7 Business Days after posting.

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**18.3 Address for notices**

A person's address and fax number are those set out below, or as the person notifies the sender:

**CLIL**

Address: Level 15, 255 Pitt Street, Sydney NSW 2000  
Fax number: 02 9994 7777  
Attention: Company Secretary

**CKLS**

Address: 2 Dai Fu Street, Tai Po Industrial Estate, Hong Kong  
Fax number: 852 2126 1211  
Attention: Vice President and Chief Operating Officer

**19. CLIL LIMITATION OF LIABILITY****19.1 Application of this clause**

This clause 19 applies notwithstanding any other provision of this document.

**19.2 Liability**

- (a) CLIL enters into this document only in its capacity as responsible entity of CWT and in no other capacity. Any liability arising under or in connection with this document can be enforced against CLIL only to the extent to which it can be satisfied out of the assets and property of CWT out of which CLIL is actually indemnified for the liability.
- (b) The limitations on CLIL's liability contained in this clause 19 extend to all liabilities of CLIL in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this document.
- (c) No party to this document may claim against the personal assets of CLIL or against CLIL in its personal capacity or seek the appointment of a liquidator, administrator, receiver (except in relation to the assets and property of CWT) or similar person to CLIL or prove in any liquidation, administration or arrangement of or affecting CLIL (except in relation to the assets and property of CWT).
- (d) The provisions of this clause 19 shall not apply to any obligation or liability of CLIL to the extent that it is not satisfied because under the CWT Constitution or by operation of law there is a reduction in the extent of CLIL's indemnification out of the assets and property of CWT as a result of CLIL's failure to properly perform or exercise any of its powers or duties in relation to CWT.

**19.3 Survival**

The provisions of this clause 19 shall survive termination of this document.

**20. AMENDMENT AND ASSIGNMENT****20.1 Amendment**

This document can only be amended or replaced by another document executed by the parties.

## **20.2 Assignment**

A party may only assign, declare a trust over or otherwise deal with its rights under this document with the prior consent of each other party.

## **21. GENERAL**

### **21.1 Governing law**

- (a) This document is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

### **21.2 Liability for expenses**

- (a) CKLS must pay for all stamp duty payable on this document and any stamp duty payable on, or in respect of, the transfer of the Scheme Units to CKLS (or the CKLS Nominee) pursuant to this document.
- (b) Each party must pay its own expenses incurred in negotiating, preparing, executing and registering this document.

### **21.3 Giving effect to this document**

Each party must do anything within its power (including execute any document and sign, pass, or vote in favour, of all resolutions (including conditional resolutions) necessary), and must use its best endeavours to procure that each of its employees and agents and each director it nominated to the board of a company (subject to the fiduciary obligations owed by that director to the relevant company) does anything (including execute any document and sign, pass or vote in favour of all resolutions (including conditional resolutions) necessary,) that any other party may reasonably require to give full effect to this document.

### **21.4 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **21.5 No partnership or agency**

Nothing in this document is to be treated as creating a partnership and, except as specifically provided in this document, no party may act as agent of or in any way bind another party to any obligation.

### **21.6 Operation of this document**

- (a) This document and the Confidentiality Agreement contain the entire agreement between the parties about their subject matter. Any previous understanding,

Blake Dawson

agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

#### **21.7 Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

#### **21.8 Consents**

Where this document contemplates that a party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

#### **21.9 No merger**

No provisions of this document merge on the implementation of the Scheme.

#### **21.10 Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

#### **21.11 Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties this document prevails to the extent of the inconsistency.

#### **21.12 Counterparts**

This document may be executed in counterparts.

# Attachment D

## Supplemental Deed

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### **Challenger Wine Trust**

ARSN 092 960 060

### **Challenger Listed Investments Limited**

ABN 94 055 293 644

### **Blake Dawson**

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
T 61 2 9258 6000  
F 61 2 9258 6999

**Reference**  
SJD MES 02-2023-4904  
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Corporate/578777\_1

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## Supplemental Deed

### DATE

### PARTY

**Challenger Listed Investments Limited** (ABN 94 055 293 644) (**Trustee**) in its capacity as responsible entity of the **Challenger Wine Trust** (ARSN 092 960 060) (**Trust**)

### RECITALS

- A. The Trustee is a public company limited by shares, incorporated in Australia and registered in South Australia. Its registered office is at Level 15, 255 Pitt Street, Sydney, NSW, 2000.
- B. The Trustee is the responsible entity of the **Challenger Wine Trust** (ARSN 092 960 060) (**Trust**) established under the constitution dated 19 February 1998 (as amended from time to time) (**Constitution**).
- C. The Trust has been registered by the Australian Securities and Investments Commission (**ASIC**) as a managed investment scheme pursuant to section 601EB of the Corporations Act 2001 (Cth) (**Corporations Act**).
- D. Units are Officially Quoted on the Australian Securities Exchange and, as at the date of this deed, 190,759,842 Units were on issue.
- E. CK Life Sciences Int'l., Inc. is a company incorporated in the British Virgin Islands with limited liability (**CKLS**).
- F. The Trustee (acting in its capacity as responsible entity of the Trust) and CKLS agreed, by executing an implementation agreement dated *[insert date]*, to propose and implement the Scheme.
- G. The Constitution must be amended to facilitate the Scheme.
- H. Clause 37 of the Constitution provides that, subject to the Corporations Act or the Listing Rules, the Trustee may amend the Constitution by a written document, in any form it thinks fit and must do so if the Members, by a resolution of a majority of at least 75% of those Members present and voting, have approved the amendment.
- I. Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of the Members.
- J. At a meeting of Members held on *[insert date]* convened in accordance with the Corporations Act and the Constitution, Members approved the Scheme Resolutions, including a special resolution to modify the Constitution to make the amendments to the Constitution now set out in this deed.
- K. The Scheme is subject to satisfaction or waiver in accordance with the SIA of all of the Conditions.
- L. Pursuant to section 601GC(2) of the Corporations Act, the Trustee must lodge a copy of the modifications to the Constitution made by special resolution of Members which are now set out in this deed with ASIC and the amendments to the Constitution cannot take effect until a copy is lodged with ASIC.

## 1. DEFINED TERMS & INTERPRETATION

### 1.1 Defined terms

Terms used in this deed have the same meaning as in the Constitution unless otherwise defined in this deed or the context requires otherwise.

**Condition** has the same meaning given to it in the SIA.

**Effective Date** means the date on which the amendments to the CWT Constitution to facilitate the Scheme, including the insertion of clause 39, come into effect pursuant to section 601GC(2) of the Corporations Act.

**Meeting Date** means the date on which the Scheme Meeting is held.

**Scheme** has the same meaning given to it in the SIA.

**Scheme Meeting** has the same meaning given to it in the SIA.

**Scheme Resolutions** has the same meaning given to it in the SIA.

**SIA** means the scheme implementation agreement dated *[insert date]* entered into between the Trustee (acting in its capacity as responsible entity of the Trust) and CKLS.

### 1.2 Interpretation

Clause 1.4 of the Constitution applies to this deed as if set out in this deed.

## 2. AMENDMENTS TO THE CONSTITUTION

With effect on and from the Effective Date, the Constitution is amended as follows:

- (a) in clause 1.1, by inserting the following definitions in alphabetical order:

**Aggregate Scheme Consideration** means the Transfer Price multiplied by the number of Scheme Units.

**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities and other financial products operated by ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532.

**CKLS** means CK Life Sciences Int'l., Inc. (incorporated in the British Virgin Islands with limited liability).

**CKLS Nominee** means a wholly owned subsidiary of CKLS.

**CLC** means Challenger Life Company Limited ABN 44 072 486 938.

**CLC Group** means CLC and its related bodies corporate other than CLIL and **CLC Group Member** means any one of them.

**Conditions Satisfaction Date** has the meaning given to that term in the SIA.

**Control** has the meaning given in section 50AA of the Corporations Act.

**Deed Poll** means the deed poll dated *[insert date]* executed by CKLS in favour of Scheme Participants.

**Effective Date** means the date on which the amendments to this constitution to facilitate the Scheme, including the insertion of clause 39, came into effect pursuant to section 601GC(2) of the Corporations Act.

**Entity** has the meaning given in section 64A of the Corporations Act.

**Implementation Date** means the date which is 2 Business Days after the Record Date or such other date as the parties agree in writing.

**Record Date** means 7 pm on the date that is 5 Business Days after the Condition Satisfaction Date or such other date as may be agreed by the parties in writing.

**Registry** means the share registry of CWT, being Link Market Services Limited.

**Scheme** means the arrangement, in accordance with Guidance Note 15, under which CKLS (or the CKLS Nominee) acquires all of the Scheme Units that is facilitated by amendments to the CWT Constitution as set out in this Supplemental Deed, including the insertion of clause 39, subject to the Scheme Resolutions being approved by the requisite majorities of CWT Members.

**Scheme Meeting** means the meeting of Members, held on *[insert date]* and convened in accordance with the Corporations Act and the SIA, to consider the Scheme Resolutions.

**Scheme Participant** means each person registered as the holder of a Scheme Unit on the Record Date.

**Scheme Resolutions** means resolutions of CWT Unitholders to approve the Scheme including:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the steps required to implement the Scheme;
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve the amendments to the CWT Constitution as set out in the Supplemental Deed and to authorise CLIL to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments.

**Scheme Transfer** means, for each Scheme Participant, a proper instrument of transfer of their Scheme Units for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Units.

**Scheme Unit** means a Unit on issue on the Record Date (other than any units held by or on behalf of the CLC Group).

**SIA** means the scheme implementation agreement dated *[insert date]* entered into between the Responsible Entity (acting in its capacity as responsible entity of the Trust) and CKLS.

**Transfer Price** means \$0.24 per Scheme Unit.

- (b) by inserting "Subject to clause (aa)," at the beginning of clause 16.2(a).
- (c) by deleting the words "on not less than one month's notice" and replacing them with "at any time and with immediate effect by giving notice of its retirement" in clause 16.2(a).

- (d) by inserting a new clause 16.2(aa) as set out below:
- “(aa) If the Responsible Entity retires under paragraph (a) and does not appoint a new Responsible Entity to take its place, the Responsible Entity must continue to act as trustee of the Scheme until such time as the Members appoint a new Responsible Entity by Ordinary Resolution.”
- (e) by deleting clause 17.1 and inserting a new clause 17.1 as set out below:
- “17.1 Responsible Entity must not hold Units**
- Notwithstanding any other provision in this constitution, while the Responsible Entity is the trustee or responsible entity of the Trust, the Responsible Entity must not:
- (a) hold any Units, Options or Stapled Securities, in any capacity; or
- (b) be a Member, in any capacity.
- This clause 17.1 is irrevocable and cannot be amended under clause 37.”
- (f) by inserting “While the Scheme is a Registered Scheme,” at the beginning of clause 18.1.
- (g) by inserting a new clause 18.1A as set out below:
- “18.1A Fees payable to Responsible Entity (While not a Registered Scheme)**
- While the Scheme is not a Registered Scheme, the Responsible Entity is to be paid fees as agreed with Members from time to time.”
- (h) by inserting a new clause 39 as set out below:
- “39 Scheme**
- This clause 39 applies on and from the Conditions Satisfaction Date.
- 39.1 Dealings in Units**
- (a) For the purpose of establishing the persons who are Scheme Participants, dealings in Units will only be recognised if:
- (i) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
- (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the Registry by 7 pm on the Record Date.
- (b) The Responsible Entity will register registrable transfers or transmission applications of the kind referred to in clause 39.1(a)(ii) by, or as soon as practicable after, the Record Date.
- (c) The persons shown in the Register, and the number of Scheme Units shown as being held by them, after registration of transfer and transmission applications of the kind referred to in clause 39.1(a), will be taken to be the Scheme Participants, and the number of Scheme Units held by them, on the Record Date.

- (d) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Participants, any transfer or transmission application in respect of Units received after the Record Date (or received prior to the Record Date not in registrable form) and prior to registration of CKLS (and/or the CKLS Nominee) as the holder of all Scheme Units under clause 39.3(iii).
- (e) The Responsible Entity will, until CKLS (and/or the CKLS Nominee) has been entered into the Register as the holder of all the Scheme Units, maintain or procure the maintenance of the Register in accordance with this clause 39.1. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 39.1(a) will solely determine the persons who are Scheme Participants and their entitlements to the Scheme Consideration.
- (f) From the Record Date and until registration of CKLS (and/or the CKLS Nominee) as the holder of all Scheme Units under clause 39.3(iii), no Unit Holder may deal with Units in any way except as set out in this clause 39 and any attempt to do so will have no effect.
- (g) As from the Record Date, and without limiting clause 39.5, (and, other than for CKLS (and/or the CKLS Nominee), following the Implementation Date):
  - (i) all unit certificates and holding statements for Scheme Units will cease to have effect as documents of title in respect of those Scheme Units; and
  - (ii) each entry in the Register as at the Record Date relating to the Scheme Units will cease to have any effect other than as evidence of the entitlements of Scheme Participants to payment of the Transfer Price in respect of the Scheme Units.
- (h) As soon as practicable after the Record Date but before the Implementation Date, the Responsible Entity must give to CKLS details of the names and addresses shown in the Register of all Scheme Participants and of the number of Scheme Units held by each of them on the Record Date in such form as CKLS may reasonably require.

### **39.2 Scheme Consideration**

- (a) On or before 12:00pm on the Implementation Date, in consideration for the transfer of the Scheme Units to CKLS (and/or the CKLS Nominee), CKLS must satisfy its obligations to pay (or procure the CKLS Nominee to pay) each Scheme Participant the Transfer Price in respect of each Scheme Unit registered in the name of that Scheme Participant by depositing (or procuring the deposit of) in cleared funds an amount equal to the Aggregate Scheme Consideration into an account in the name of the Responsible Entity.
- (b) The Responsible Entity is to procure that the Aggregate Scheme Consideration be held by the Responsible Entity on trust for the Scheme Participants (except that any interest on the amount will be for the account of CKLS (and/or the CKLS Nominee)) for the purpose of commencing paying to each Scheme Participant the Transfer Price per Scheme Unit held by that Scheme Participant at the Record Date within 3 Business Days after the Implementation Date.
- (c) For the avoidance of doubt, the Aggregate Scheme Consideration shall not constitute Scheme Property.

**39.3 Transfers to CWH**

On the Implementation Date, subject to CKLS satisfying its obligations to pay to (or procure the payment to) each Scheme Participant the Transfer Price in the manner contemplated by clause 39.2(a), all of the Scheme Units, together with all rights and entitlements attaching to those Scheme Units as at the Implementation Date, will be transferred to CKLS (and/or the CKLS Nominee) without the need for any further act by any Scheme Participant (other than acts performed by the Responsible Entity (or its directors or officers) as attorney or agent of the Scheme Participants under clause 39.4 ) by:

- (i) the Responsible Entity delivering to CKLS for execution duly completed Scheme Transfers to transfer all of the Scheme Units to CKLS (and/or the CKLS Nominee), duly executed by the Responsible Entity (or any of its directors or officers) as attorney or agent of the Scheme Participants under clause 39.4;
- (ii) CKLS (and/or the CKLS Nominee) executing the Scheme Transfers as transferee and delivering them to the Responsible Entity for registration; and
- (iii) the Responsible Entity, immediately after receipt of the executed Scheme Transfers under clause 39.3(ii), entering, or procuring the entry of, the name and address of CKLS (and/or the CKLS Nominee) in the Register as the holder of all the Scheme Units.

**39.4 Covenants by Responsible Entity and Members**

- (a) Each Scheme Participant and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.
- (b) Each Scheme Participant, without the need for any further act, irrevocably:
  - (i) agrees to the transfer of all of their Scheme Units to CKLS (and/or the CKLS Nominee) in accordance with this clause 39;
  - (ii) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 39;
  - (iii) appoints the Responsible Entity and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any document or doing any other act necessary to give full effect to the Scheme, this clause 39, and the transactions contemplated by them, including providing to CKLS (and/or the CKLS Nominee) on behalf of that Scheme Participant a warranty by the Scheme Participant in the terms of the deemed warranty in clause 39.5(a);
  - (iv) consents to the Responsible Entity and CKLS (and/or the CKLS Nominee) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the Scheme, this clause 39 and the transactions contemplated by them; and
  - (v) appoints the Responsible Entity to enforce the Deed Poll against CKLS on behalf of and as agent and attorney for the Scheme Participant.



- (c) The Responsible Entity, as agent and attorney for each Scheme Participant, may sub delegate its functions, authorities or powers under this clause 39.4 to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (d) From the Implementation Date until the Responsible Entity registers CKLS (and/or the CKLS Nominee) as the holder of all Scheme Units in the Register, each Scheme Participant is deemed to have appointed the Responsible Entity as its attorney and agent (and directed the Responsible Entity in such capacity) to appoint CKLS (or other nominee of CKLS) severally as its sole proxy and, where applicable, corporate representative to attend Unit Holder meetings, exercise the votes attaching to the Scheme Units of which they are the registered holder and sign any Members' resolution, and no Scheme Participant may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 39.4(c). The Responsible Entity undertakes in favour of each Scheme Participant that it will appoint CKLS (or other nominee of CKLS) severally as the Scheme Participant's proxy or, where applicable, corporate representative in accordance with this clause 39.4(c).

#### **39.5 Status of Scheme Units**

- (a) Each Scheme Participant is deemed to have warranted to the Responsible Entity in its own right and on behalf of CKLS (and/or the CKLS Nominee) that all their Scheme Units (including any rights and entitlements attaching to those Units) which are transferred to CKLS (and/or the CKLS Nominee) under this clause 39 or otherwise pursuant to the Scheme will, at the date of the transfer of them to CKLS (and/or the CKLS Nominee), be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those Units) to CKLS (and/or the CKLS Nominee) pursuant to the Scheme.
- (b) CKLS (and/or the CKLS Nominee) will be beneficially entitled to the Scheme Units transferred to it under this clause 39 or otherwise pursuant to the Scheme pending registration by the Responsible Entity of the name and address of CKLS (and/or the CKLS Nominee) in the Register as the holder of those Scheme Units.

#### **39.6 Effect of clause 39**

This clause 39:

- (a) binds the Responsible Entity and all Scheme Participants, including those who do not attend the Scheme Meeting, those who do not vote at that meeting and those who vote against the Scheme Resolutions at that meeting; and
- (b) overrides the other provisions of this Constitution to the extent of any inconsistency.

#### **39.7 Responsible Entity's limitation of liability**

Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever beyond the assets of the Trust, to Members arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act

Blake Dawson

(including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.

### **39.8 Implementation of Scheme**

- (a) The Responsible Entity may do any act, matter or thing pursuant to this clause 39 notwithstanding that it has an interest in the act, matter or thing or any consequence thereof.
- (b) The Responsible Entity may amend the terms of the Scheme if:
  - (i) such amendment is not inconsistent with the approval given by the Scheme Participants or such amendment does not adversely affect the rights of Scheme Participants whose Units are to be transferred under the Scheme; and
  - (ii) such amendment is approved in writing by CKLS.

This clause 39 shall apply to the Scheme as amended.”

- (i) by deleting the contents of Part 1 of Schedule 1 and replacing them with the following paragraph:

“The Responsible Entity is entitled to a Base Fee for each Fee Period equal to one twelfth of 0.65% of the Aggregate Value as at the last day of the Fee Period up to and including \$1,000,000,000, plus one twelfth of 0.45% of Aggregate Value as at the last day of the Fee Period in excess of \$1,000,000,000.”

### **3. NO RESETTLEMENT OR REDECLARATION**

The Trustee confirms that it is not by this deed:

- (a) resettling or redeclaring the Trust; or
- (b) effecting or causing the transfer, vesting or accruing of any property comprising the assets of the Trust to or in any person.

### **4. GOVERNING LAW**

This deed will be governed by the laws of the State of New South Wales.

Blake Dawson

**EXECUTED** as a deed poll.

Sealed and delivered by **Challenger Listed Investments Limited** (ABN 94 055 293 644) as responsible entity of the **Challenger Wine Trust** (ARSN 092 960 060) by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/secretary (print)

# Attachment E



**KPMG Corporate Finance (Aust) Pty Ltd**  
Australian Financial Services Licence No. 246901  
10 Shelley Street  
Sydney NSW 2000

P O Box H67  
Australia Square 1213  
Australia

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DX: 1056 Sydney  
www.kpmg.com.au

The Directors  
Challenger Listed Investments Limited as the responsible  
entity for Challenger Wine Trust  
Level 15  
255 Pitt Street  
Sydney NSW 2000

16 December 2010

Dear Madam and Sirs

## **Independent expert report & Financial services guide**

### **1 Introduction**

On 8 November 2010, Challenger Listed Investments Limited (CLIL), the responsible entity of Challenger Wine Trust (CWT) announced that CK Life Sciences Int'l., Inc. (CKLS) had agreed to acquire (in its own name or by its nominee) all of the issued units of CWT not owned by Challenger Life Company Limited (CLC) (representing approximately 72.3% of issued units) by way of a Trust Scheme (the Scheme). CKLS is offering the unitholders of CWT other than CLC cash consideration of \$0.24 per unit (the Proposal) which is subject to a number of conditions precedent. Following the implementation of the Proposal, CKLS will become co-owner of CWT with CLC.

Implementation of the Proposal is subject to approvals by CWT unitholders not associated with CKLS (the Non-Associated Unitholders) which are to be sought at a unitholder meeting in January 2011. A Scheme Implementation Agreement (SIA) has been signed by CLIL (as responsible entity of CWT) and CKLS. The Proposal is also subject to approvals, relief and satisfaction of regulatory requirements from third parties including the Australian Securities and Investments Commission (ASIC), the Hong Kong Stock Exchange (HKEX) and the New Zealand Overseas Investment Office (OIO).

The Directors of CLIL have requested KPMG Corporate Finance (Aust) Pty Ltd (KPMG) to prepare an Independent Expert's Report (IER) to express an opinion as to whether the Proposal is:

- fair and reasonable to the Non-Associated Unitholders
- in the best interests of the Non-Associated Unitholders.

This IER has been prepared by KPMG for the inclusion in the Explanatory Memorandum to be sent to the Non-Associated Unitholders in December 2010. This report should not be used for any other purposes or by any other party.

KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.



## **1.1 Parties to the Proposal**

CWT is a property trust listed on the Australian Securities Exchange (ASX) with a portfolio of vineyards across Australia and New Zealand. CLIL is a wholly owned subsidiary of Challenger Financial Services Group Limited (now known as Challenger Limited) (CFSG) and is responsible entity of CWT. Challenger Management Services Limited (CMSL), a wholly owned subsidiary of CFSG, holds a management agreement with CLIL to provide management services to CWT. At 30 June 2010, CWT owned a property portfolio with a book value in excess of \$200 million and had a market capitalisation at the close of trade on 1 November 2010 (being the date CWT entered a trading halt prior to the announcement of the Proposal) of \$36 million.

CKLS is a wholly owned subsidiary of CK Life Sciences Int'l., (Holdings) Inc. (CK Life) which is listed on the HKEX. CK Life is engaged in research and development, commercialisation, marketing and sale of health and agriculture related products. At the close of trade on 19 November 2010, CK Life had a market capitalisation of HK\$4,902 million, approximately \$640 million.

## **2 Summary of the Proposal**

The principal terms of the Proposal are that CWT unitholders other than CLC will receive \$0.24 in cash for each CWT unit on issue. Under the SIA, CLIL undertakes that CWT will not make any distribution “for the half year ended 31 December 2010 or otherwise”.

Following the implementation of the Scheme, CMSL will provide ongoing management of CWT.

### **2.1 Conditions precedent**

The Proposal is subject to a number of conditions precedent, including amongst others:

- approvals for the Scheme’s resolutions by a requisite majority of the Non-Associated Unitholders
- no “prescribed occurrences” arising in respect of CWT
- approval from the OIO as CWT’s assets represent “sensitive land” pursuant to legislation in New Zealand
- up until the unitholders meeting, no “material adverse changes” to the ongoing nature of the business, financial position or results of operations or financial performance, and from the unitholders meeting to 31 March 2011, no natural disasters that would result in total payments received under all leases for the ensuing three years to be reduced by more than 25% of what would have been received had the natural disaster not occurred.

Further details in relation to the terms of the Proposal and conditions precedent are set out in the Explanatory Memorandum.



### 3 Requirements for our report

The Proposal will require approval by the Non-Associated Unitholders. To assist the Non-Associated Unitholders in assessing the Proposal, the Directors of CLIL have requested KPMG to prepare an IER advising whether, in our opinion, the Proposal is fair and reasonable to the Non-Associated Unitholders for the purpose of item 7 of section 611 (Section 611) of the Corporations Act (the Act) and the Takeovers Panel Guidance Note 15 (GN 15) (Fairness and Reasonable Opinion). GN 15 requires that the IER set out the reasons for forming our opinion and certain matters required by Section 648A(3) of the Act.

CLIL, in its capacity as responsible entity for CWT, is required, in exercising its powers and carrying out its duties as responsible entity of CWT, to act in the best interests of unitholders. In order to assist in discharging their fiduciary obligations, the Directors have requested that KPMG provide an opinion as to whether the Proposal is in the best interests of the Non-Associated Unitholders (Best Interests Opinion).

In undertaking the work associated with the IER, we have had regard to Regulatory Guide (RG) 111 issued by the ASIC in relation to the content of the expert's reports, ASIC RG 112 in respect of the independence of experts, ASIC RG 74 in respect of acquisitions agreed to by unitholders and GN15.

Regulatory Guide (RG) 111 "Content of expert reports", issued by ASIC, indicates the principles and matters which it expects a person preparing an IER to consider. RG 111.15 states that where a scheme of arrangement is used as an alternative to a takeover bid, the form of analysis undertaken by the expert should be substantially the same as for a takeover bid. That form of analysis considers whether the transaction is "fair and reasonable" and, as such, incorporates issues as to value. In particular:

- 'fair and reasonable' is not regarded as a compound phrase
- an offer is 'fair' if the value of the offer price or consideration is equal to or greater than the value of the securities subject to the offer
- the comparison should be made assuming 100% ownership of the 'target' and irrespective of whether the consideration is scrip or cash
- the expert should not consider the percentage holding of the 'bidder' or its associates in the target when making this comparison
- an offer is 'reasonable' if it is 'fair'
- if an expert would conclude that a proposal was 'fair and reasonable' if it was in the form of a takeover bid, it will also be able to conclude that the scheme is in the best interests of the members of the company
- an offer may be reasonable if, despite not being fair, the expert believes after considering other significant factors, unitholders should accept the offer in the absence of any higher bid.





Under this framework, and in the absence of a higher offer, the Proposal would be considered fair, and therefore reasonable, if the consideration received is equal to, or greater than, the assessed full underlying value of CWT units, assuming 100% ownership of CWT. Should the Proposal be considered not fair, it may still be reasonable if, despite not being fair, other significant factors and the alternatives are sufficient to indicate the offer should be accepted in the absence of any higher bid.

RG 111 states that the analysis required as to whether the Proposal is in the best interests of the Non-Associated Unitholders is the same as that required to determine if the Proposal is fair and reasonable. As such, we have relied upon the analysis described above to form an opinion as to whether the Proposal is in the best interests of the Non-Associated Unitholders.

#### **4 Summary of opinion**

**In our opinion the Proposal is, on balance, not fair but reasonable and in the best interests of the Non-Associated Unitholders.**

Factors leading to our opinion are discussed below.

##### **4.1 Rationale of the Proposal**

Throughout the financial year (FY) ended 30 June 2010 (FY10), CWT operated under difficult conditions with an oversupply of grapes and declining wine prices impacting the profitability of its tenants. These operating conditions have resulted in declining property valuations in CWT's property portfolio. In response, CWT initiated some property sales, withheld part of the June 2010 distribution and introduced a distribution reinvestment plan (DRP) in an attempt to alleviate the increasing pressure in meeting its debt covenants and position the business for its forthcoming debt refinancing of approximately \$64 million in May 2011.

As previously noted, under the SIA, CLIL undertakes that CWT will not make any distribution for the half year ended 31 December 2010. The Board of CLIL has also advised of their intention that the December 2010 distribution would have otherwise been withheld in an effort to manage CWT's capital position within existing debt covenant levels.

Should the operating conditions currently being experienced continue, or capital management initiatives be inadequate, CWT's headroom in relation to its existing debt covenants may reduce or cause a breach of those covenants, particularly as CWT's above market rent position unwinds from FY11 and a major tenant's lease is renegotiated in 2012/2013. In addition, CWT's ability to reduce debt to the levels required to complete a successful refinancing will be significantly reduced. We note that as a result of cross guarantees a breach of one lenders debt covenants triggers default of the others. Any breach may further constrain CWT's ability to operate as a going concern and potentially force:

- an accelerated sale of the assets of CWT possibly at a steep discount to valuations
- accelerated debt amortisation including the withholding of distributions to unitholders



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- a complete wind up of the operations of CWT.

On 10 June 2010, CWT announced it was reviewing a number of capital management initiatives to reduce its gearing. This review was conducted as the management of CWT expected a continuation of declining valuations of its property portfolio during FY11. At 31 December 2010, valuations on properties comprising 85% of the property portfolio were conducted by independent specialists as part of the Proposal, indicating a decline of 9.4% from the value at 30 June 2010. Further, while not directly comparable due to the impact of property sales, the current value of \$212.4 million represents a decline of 30.9% from their peak of \$307.2 million at 30 June 2008.

The capital management alternatives considered by the Board of CLIL included:

- a recapitalisation scenario under which CWT raises equity and retains cash to reduce debt
- a debt refinancing and extension scenario under which CWT refinances all current debt
- asset sales or a managed wind up scenario under which assets are sold over a defined period of time.

The likely consequences of the capital management alternatives considered form the basis of our opinion and are discussed in further detail below.

#### **4.1.1 Recapitalisation scenario**

From June 2010, management, with its advisor, canvassed potential investors for a rights issue of \$50 million to \$60 million to recapitalise CWT. We understand that whilst there was interest from potential investors in undertaking a rights issue, it was likely that there would be insufficient demand for the rights issue (potentially in conjunction with asset sales and the retention of distributions to fund debt amortisation) to meet CWT's requirements. Potential investor concerns included the size of CWT and potential liquidity post the rights issue, discomfort with the outlook for the wine industry generally and the credit risk of CWT's key tenants, inadequate risk/reward for participation and the inability to value above market rents.

Based on this analysis, the directors of CLIL decided that a recapitalisation scenario is unlikely to offer a superior financial outcome to the Non-Associated Unitholders compared to the Proposal due to:

- the dependency on investors who previously cited a number of deterrents to participating in the rights issue and the relatively low participation in the DRP, excluding CLC, suggested existing investors were not willing to continue to invest in CWT
- the high level of dilution in terms of earnings and distributions to unitholders that did not participate
- the size of the rights issue required (\$50 million to \$60 million) substantially exceeded the total market capitalisation of CWT as at 1 November 2010 of \$36 million



- the significant decline in the unit price which would result from such an issue.

#### **4.1.2 Refinancing and debt extension scenario**

CWT has been in continuous dialogue with its banks to refinance its debt facilities, the first of which matures in May 2011. In January 2009, one of CWT's major tenants Australian Vintage Limited (AVG), announced several writedowns and that it was facing operational difficulties. As the CWT properties tenanted by AVG are held as security by CWT's lenders, AVG's operational difficulties potentially influenced refinancing discussions regarding CWT's existing debt facility. We understand that the refinancing discussions resulted in CWT being offered substantially tighter debt terms with higher margins, lower loan-to-value (LVR) covenants and reduced facilities than are currently in place. Subsequently, CWT approached a number of alternative banks to negotiate debt facilities with no substantially more favourable outcomes offered given the banks' consistent view of operating conditions within the wine industry and a general reluctance to lend at previous LVR levels.

Prior to the announcement of the Proposal, debt covenant waivers and consents were received from CWT's lenders in respect to CWT's debt facilities for the half year ending 31 December 2010. In the absence of receiving these debt covenant waivers and the retention of the 31 December 2010 half year distribution, there was a significant risk that CWT would exceed its debt covenants for the 31 December 2010 half year.

#### **4.1.3 Asset sales or managed wind up scenario**

CWT's properties have been valued independently allowing for:

- a willing but not anxious buyer and seller
- a reasonable period to sell.

With property values in decline and a number of sellers already in the market, an orderly realisation of CWT's portfolio is likely to require substantial time. As CWT has a debt repayment due in May 2011 it would likely be perceived as a forced seller and therefore may not realise properties at independent valuation. Therefore, there is no certainty that a quick realisation of sufficient properties to meet debt reduction requirements could be achieved nor that a complete realisation would be possible over a reasonable timeframe.

#### **4.2 The Proposal is not fair**

In order to assess the fairness of the Proposal we have compared the market value of a unit in CWT (on a control basis in accordance with RG111) to the market value of the consideration offered under the terms of the Proposal, as set out in the table below.



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**Table 1: Assessment of fairness**

\$	Per unit
Estimated market value of a unit in CWT (control basis) – Net independent value (NIV)	\$ 0.41
Estimated market value of the consideration	\$ 0.24
<i>Discount to NIV</i>	<i>% 41.5%</i>

*Source: KPMG analysis*

The market value of a unit in CWT (on a control basis) at \$0.41 is greater than the value of consideration offered by CKLS. As such, KPMG considers the Proposal to be **not fair** to the Non-Associated Unitholders.

We have estimated the market value of a unit in CWT (on a control basis) using the net assets approach that estimates the market value of CWT by aggregating the fair market value of its assets less its liabilities. This approach fully incorporates the value of CWT's investment properties but does not take into account its obligation to pay management fees, as well as the specific circumstances currently affecting CWT, such as near term debt maturities, potential covenant breaches and capital constraints that may be included in the trading price of CWT. These and other factors are likely to impact the value realisable by the Non-Associated Unitholders in the absence of the Proposal and we have considered these factors in the assessment of reasonableness of the Proposal.

### 4.3 The Proposal is reasonable

In accordance with RG 111, an offer is reasonable if it is fair. An offer might also be reasonable if, despite being "not fair" the expert believes that there are sufficient reasons for the Non-Associated Unitholders to accept the offer in the absence of any higher offer.

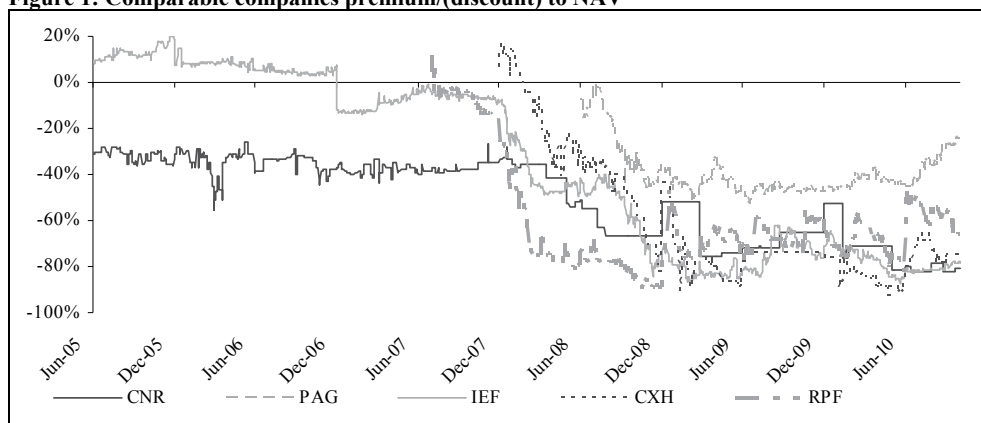
Whilst we consider the Proposal to be **not fair**, we have assessed the reasonableness of the Proposal by considering whether the advantages of the Proposal proceeding sufficiently outweigh the disadvantages together with any other factors we consider to be pertinent.

We have set out below an analysis of the traded entities discounts to net asset value (NAV), observed discounts to NAV for rights issues and a summary of the advantages and disadvantages of the Proposal.

#### 4.3.1 Traded entities discounts to NAV

The Proposal represents a 41.5% discount to the fair market value of a CWT unit. Whilst we have concluded that the Proposal is not fair, a market value below NAV is not an uncommon occurrence amongst listed Australian property trusts. Set out in the figure below is an analysis of the discounts to NAV of comparable Australian property trusts to CWT since June 2005.

**Figure 1: Comparable companies premium/(discount) to NAV**



Source: IRESS, Company financial statements

Note: Coonawarra Australia Property Trust (CNR), Prime AG Australia Limited (PAG), ING Real Estate Entertainment Fund (IEF), Compass Hotel Group Limited (CXH), Redcape Property Group (RPF)

In relation to the figure above, we note

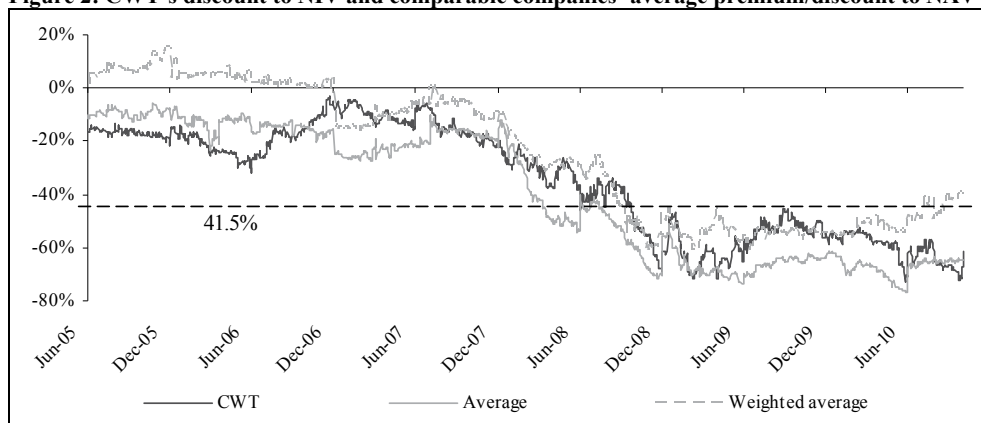
- there are no directly comparable property trusts to CWT. As CWT is a small niche property trust with assets in the wine industry, we have compared Australian property trusts with interests in agricultural land (Coonawarra Australia Property Trust (CNR) and Prime AG Australia Limited (PAG)) and specialised Australian property trusts with market capitalisations less than \$250 million (ING Real Estate Entertainment Fund (IEF), Compass Hotel Group Limited (CXH) and Redcape Property Group (RPF))
- since 2007, the comparable property trusts have traded at a discount to NAV
- at 1 November 2010, the discounts to NAV for PAG, CNR, IER, CXH and RPF were 23.8%, 62.4%, 78.6%, 73.8% and 66.2% respectively with an average discount of 64.6%. These comparable companies had an average discount of 67.2% during 2010.



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Set out in the figure below is CWT's historical discount to NIV compared to the average and weighted average discount to NAV of the listed comparable property trusts as outlined above since June 2005.

**Figure 2: CWT's discount to NIV and comparable companies' average premium/discount to NAV**



Source: IRESS, Company financial statements

Note: Average and weighted average premiums/discount to NAV consist of the following companies, Coonawarra Australia Property Trust (CNR), Prime AG Australia Limited (PAG), ING Real Estate Entertainment Fund (IEF), Compass Hotel Group Limited (CXH) and Redcape Property Group (RPF)

In relation to the figure above, we note:

- on 1 November 2010 (prior to the announcement of the Proposal), CWT traded at a 61% discount to NIV with an average discount to NIV of 35% over the five years to 1 November 2010 (which period encompasses a timeframe before current market volatility commenced). This compares to the average and weighted average discount to NAV of comparable companies of 64.6% and 38.8% on 1 November 2010 respectively
- the trading prices reflect a minority interest and therefore exclude a premium for control, while the NIV and NAV are based on net assets represent the value of a controlling interest
- CWT's discount to NIV may reflect an illiquidity discount compared to some of its peers. For example, in the six months to 1 November 2010, only 9.6% of CWT units on issue traded. This appears relatively low compared to the implied liquidity over the same period for IEF (13.1%), PAG (29.5%) and CXH (28.7%).

In light of this analysis, the discount to NIV implicit in the Proposal appears to be broadly in line with:

- CWT's historical discount to NIV
- the market pricing discounts attributable to the broader specialised property trust sector.





#### 4.3.2 Observed discounts to NAV for rights issues

In conjunction with the traded entities discounts to NAV considered above, we have also considered the premiums / discounts applied to rights issues of Australian property trusts in the past two years as summarised in the table below.

**Table 2: Summary of comparable Australian property trust equity issues (2009 to present)**

	Amount raised (\$m)	Prem/(disc) to closing price	Prem/(disc) to NTA pre-offer	Prem/(disc) to pro-forma NTA
Mean (2009)	531.7	(16.6%)	(38.0%)	(31.3%)
Median (2009)	192.0	(14.0%)	(50.6%)	(39.4%)
Mean (2010)	249.5	(12.2%)	(26.7%)	(16.5%)
Median (2010)	195.0	(7.3%)	(24.6%)	(20.8%)
<b>Total mean</b>	<b>457.0</b>	<b>(15.4%)</b>	<b>(34.9%)</b>	<b>(26.9%)</b>
<b>Total median</b>	<b>193.5</b>	<b>(13.9%)</b>	<b>(50.0%)</b>	<b>(36.5%)</b>

Source: KPMG Analysis, Company announcements, IRESS

In relation to the table above, we note:

- details of the transactions considered are set out in Appendix 4
- due to the nature of property businesses, we consider the net tangible assets (NTA) and NAV of property trusts to be the same due to their asset bases comprising mostly of tangible assets which are generally independently valued
- the mean and median pre-offer discount to NTA for rights issues conducted by Australian property trusts over the past two years was 34.9% and 50.0% respectively, whilst the discount to pro-forma NTA was 26.9% and 36.5% respectively
- recapitalisation programs such as rights issues were conducted as a consequence of the global financial crisis (GFC) due to the highly geared nature of Australian property trusts. As a result, the discounts are reflective of difficult trading conditions and financial positions of Australian property trusts following the GFC.

The implied discount of the Proposal to NIV represents a discount broadly in line with the pre-offer and pro-forma NTA mean and median discounts.

In addition, whilst not a directly comparable transaction, we note that Deleat's Wine Estate Limited (a subsidiary of Deleat's Group Limited) recently acquired the remaining 45% interest in Oyster Bay Marlborough Vineyards Limited it did not already own. Oyster Bay owns and operates vineyards in New Zealand. The offer of NZ\$2.08 per share represents a discount to the NAV as at December 2009, of NZ\$6.33 per share, of 67.1%.



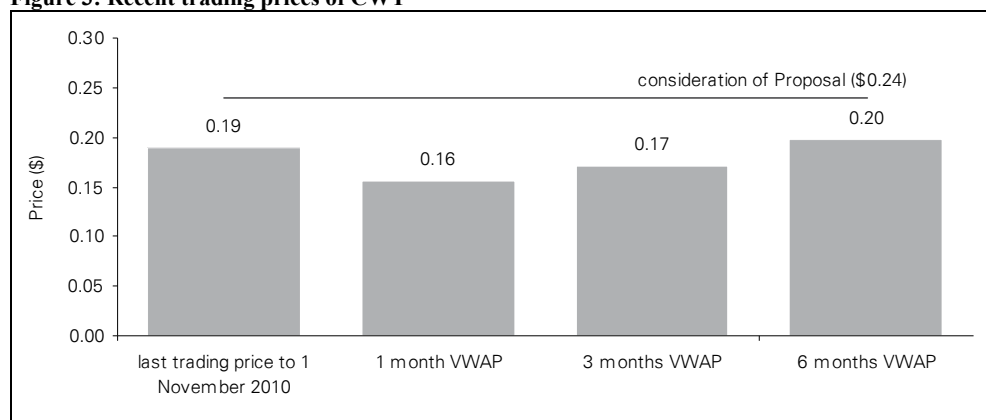
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### 4.3.3 Advantages to the Proposal

#### 4.3.3.1 The cash consideration represents a premium to recent trading in CWT units

The consideration offered under the Proposal is a premium to the recent trading in CWT units (prior to the announcement of the Proposal) as set out in the figure below:

**Figure 3: Recent trading prices of CWT**



Source: IRESS, Company financial statements  
VWAP: Volume weighted average price

In relation to the figure above, we note:

- the trading prices exclude any premium for control
- due to continued uncertainty in the wine industry and the funding constraints of CWT over the long term, in the absence of the Proposal, CWT units are likely to trade at prices below the consideration offered under the Proposal. This is due to the increased likelihood that existing assets or future equity raisings will be required to repay or refinance debt to more sustainable LVR levels required by banks. Undertaking these activities during the current economic environment is likely to result in substantially reduced value to the Non-Associated Unitholders.

#### 4.3.3.2 The Proposal removes the uncertainty of the debt refinancing scenario in 2011

As previously discussed in section 4.1.2, given the current issues facing CWT and the state of the debt markets, the current level of debt in CWT is unsustainable as lenders are not providing funding to either the same level, at the same margins or on the same terms as was provided prior to the GFC. The Proposal eliminates the uncertainty associated with an unfavourable refinancing scenario from the perspective of the Non-Associated Unitholders and avoids the significant dilution that would result from the rights issue that would be required as part of any refinancing.

#### **4.3.3.3 *The Proposal allows the Non-Associated Unitholders an immediate realisation of their investment in CWT***

The Proposal will allow the Non-Associated Unitholders to immediately realise their investment for cash and provide favourable outcomes to unitholders. These outcomes include:

- realising their investment at a premium to the traded security price without the risk and uncertainty in the timing and quantum of proceeds to be received if the CWT assets were realised in an orderly wind up scenario
- removing any potential discount for liquidity in CWT units that the Non-Associated Unitholders have historically experienced. In addition, the Proposal allows larger unitholders of CWT to sell their units in CWT without impacting the overall unit price
- realising their investment at a time where the rental stream to CWT would be optimised. It is estimated that as at 30 June 2010, CWT's current rental income is 24.6% higher than would be achieved if the CWT properties were re-leased in the current market (termed over-renting), an increase from 6.6% at 30 June 2007. As CWT's leases approach their expiry date, leases will likely be renegotiated at lower rates or may not be re-leased, thereby putting pressure on CWT's cash flow and a future realisable value for CWT
- the Non-Associated Unitholders will be able to dispose of their investment in CWT without paying brokerage.

#### **4.3.3.4 *The Proposal allows the Non-Associated Unitholders to avoid unfunded tax consequences***

It is likely that any successful refinancing of CWT would require CWT to withhold distributions from unitholders in the medium term and utilise those funds to repay debt. Due to the trust structure of CWT, unitholders will continue to incur tax obligations which will need to be met regardless of whether a cash distribution is actually received. The Proposal will ensure that the Non-Associated Unitholders avoid any such unfunded tax obligations.

#### **4.3.4 *Disadvantages***

##### **4.3.4.1 *The Non-Associated Unitholders forgo any future appreciation in the value of a unit***

Whilst there is no certainty that CWT's existing portfolio will appreciate in the future, the current environment does not provide a competitive situation to realise the value of its property portfolio. In the future, should rentals (and property values) recover to historical levels, acceptance of the Proposal would eliminate the possibility of participating in future capital appreciation in the value of CWT's property portfolio and a unit in CWT.

Accepting the Proposal will also eliminate the possibility of future alternative bids for CWT, especially if potential bidders anticipate a recovery in the sector. In the meantime, CWT's current situation is likely to remain an impediment to acquirers and would need to be resolved for any future (non-opportunistic) bids



for CWT to occur. We note we have been informed that no viable alternative bids for CWT, or for specific CWT properties, has emerged since the announcement of the Proposal.

#### **4.3.4.2 Industry exposure difficult to replicate**

CWT provides investors with exposure to property utilised in the wine industry in Australia and New Zealand. Notwithstanding CWT's current capital requirements, implementation of the Proposal may make it difficult for Non-Associated Unitholders to replicate an investment with the specific characteristics of CWT such as operational profile, size and geography.

#### **4.3.5 Other considerations**

##### **4.3.5.1 Tax consequences**

Approval of the Proposal may result in tax consequences for the Non-Associated Unitholders. Whilst tax implications will vary depending on the circumstances of each Non-Associated Unitholder, acceptance of the Proposal may result in a tax event occurring, potentially crystallising these tax consequences including capital gains.

For details of tax consequences of accepting the Proposal you should refer to the Explanatory Memorandum.

##### **4.3.5.2 No distributions for the half year ended 31 December 2010 will be paid**

As part of the Proposal, unitholders will not receive distributions for the half year ended 31 December 2010. The cash available for distribution is forecast to amount to \$5.2 million or \$0.027 per unit. The Board of CLIL has also advised of their intention that the December 2010 distribution would have otherwise been withheld in an effort to manage CWT's capital position within existing debt covenant levels.

##### **4.3.5.3 Transaction costs**

The costs of the Proposal include stamp duty, advisory costs, legal fees, independent expert fees and other costs. If the Proposal is approved, the costs of CWT will total approximately \$2.3 million.

##### **4.3.5.4 CLC will not participate in the Proposal**

As a result of a condition imposed by CKLS at the commencement of negotiations, CLC will not participate in the Proposal and, as a result, will not receive the advantages and disadvantages that the Non-Associated Unitholders are expected to receive from disposing of their investment in CWT. CLC's investment in CWT will remain exposed to the continuing uncertainty associated with the wine industry and CWT's tenants.



#### **4.3.6 Implications if the Proposed Scheme is not approved**

In the event the Proposal is not approved, the following circumstances are likely to occur:

- CWT will need to reduce its level of gearing. This could be achieved through a number of alternatives including a large capital raising or asset sales and would result in the consequences associated with each discussed previously in section 4.1, neither of which are likely to result in greater value for the Non-Associated Unitholders
- distributions are unlikely to be paid as cash will be retained to repay debt and reduce gearing. This is likely to lead to adverse tax implications for all unitholders as tax obligations relating to the income from the units will continue to be incurred
- the CWT unit price would most likely decline to the levels at which it was trading prior to the announcement of the Proposal. Since the announcement, the CWT unit price has traded above \$0.19, the last trading price prior to the announcement of the Proposal
- CWT will incur total costs of approximately \$0.7 million (excluding GST). However, additional advisory fees are likely to be incurred as CWT will need to determine an appropriate action plan to address the current challenges facing CWT.

#### **4.3.7 Conclusion**

In summary, while CLIL considered a number of strategies, each is subject to a number of risks and uncertainties in the outcome for the Non-Associated Unitholders. The Proposal does not, of itself, resolve the debt refinancing issues for CWT in 2011. It does, however, for the Non-Associated Unitholders, eliminate the risks and uncertainties of that refinancing and present a viable exit alternative. Whilst the Proposal represents a discount to NIV, our comparison of discounts to NAV for comparable listed companies and recent rights issues in the Australian property sector, together with our views as to the other advantages and disadvantages faced by the Non-Associated Unitholders as a result of the Proposal, highlights that the Proposal is reasonable in the absence of an alternative proposal and provides the Non-Associated Unitholders their best available option to maximise the value of a CWT unit in the present circumstances..

#### **4.4 Best interests**

Having considered the factors above, including the alternative strategic options available to CWT on a stand-alone basis and the likelihood of a superior proposal emerging, we consider the Proposal to be in the best interests of the Non-Associated Unitholders.

#### **5 Other matters**

In forming our opinion, we have considered the interests of the Non-Associated Unitholders as a whole. This advice does not consider the financial situation, objectives or needs of individual Non-Associated



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Unitholders. It is not practical or possible to assess the implications of the Proposal on individual Non-Associated Unitholders as we do not know their specific financial circumstances.

KPMG's opinion should not be construed to represent a recommendation as to whether or not the Non-Associated Unitholders should accept the Proposal. The decision of the Non-Associated Unitholders as to whether or not to vote in favour of the Proposal is a matter for individual Non-Associated Unitholders based on their tax profile, liquidity preference, investment strategy and tax position. In particular, the taxation consequences will vary widely depending on the individual circumstances of each Non-Associated Unitholder. Individual Non-Associated Unitholders should therefore consider the appropriateness of our opinion to their specific circumstances before acting on it. As an individual's decision to accept or reject the Proposal may be influenced by his or her particular circumstances, we recommend that individual Non-Associated Unitholders consult their financial and/or taxation adviser.

Our opinion is based solely on prevailing market, economic and other conditions and information available as at the date of this report as set out in Appendix 2. Conditions can change over relatively short periods of time. Any subsequent changes in these conditions could impact upon our opinion. We note that we have not undertaken to update our report for events or circumstances arising after the date of this report other than those of a material nature which would impact upon our opinion. We refer readers to the limitations and reliance on information section set out in section 6 of our report.

Our report has been prepared in accordance with the relevant provisions of the Act and other applicable Australian regulatory requirements. We recommend residents of foreign jurisdictions who are entitled to receive this report and who are uncertain as to the consequences of this seek their own independent professional advice.

This report has been prepared solely for the purpose of assisting the Non-Associated Unitholders in considering the Proposal. We understand that the Independent Directors, solely in their capacity as directors of CLIL, will also take our opinion into account in determining whether to recommend the Proposal to the Non-Associated Unitholders. Other than for the Non-Associated Unitholders consideration of the Proposal, we do not assume any responsibility or liability to any other party as a result of reliance on this report for any other purpose.

All currency amounts in this report are denominated in Australian dollars unless otherwise stated and may be subject to rounding.

Neither the whole nor any part of this report or its attachments or any reference thereto may be included in or attached to any document, other than the Explanatory Memorandum to be sent to the Non-Associated Unitholders in relation to the Proposal, without the prior written consent of KPMG as to the form and context in which it appears. KPMG consents to the inclusion of this report in the form and context in which it appears in the Explanatory Memorandum.





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The foregoing is KPMG's opinion as to the merits or otherwise of the Proposal and should be considered in conjunction with and not independently of the information set out in the balance of our report and appendices as attached.

Yours faithfully

Sean Collins  
Executive Director

Ian Jedlin  
Executive Director



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## Financial services guide

Dated 16 December 2010

**KPMG Corporate Finance (Aust) Pty Ltd ABN 43 007 363 215**, Australian Financial Services Licence Number 246901 (**KPMG** or **we** or **us** or **our** as appropriate) has been engaged to provide an Independent Experts Report (**Report**) in relation to the acquisition of Challenger Wine Trust (CWT) by CK Life Sciences Int'l., Inc (CKLS) (**Transaction**) for inclusion in the Explanatory Memorandum dated 16 December 2010 (**Document**) prepared by Challenger Listed Investments Limited (CLIL) as responsible entity of CWT (**Company**).

### Purpose of this Guide

This Guide is designed to help retail clients to decide how to use our Report. It includes information about:

- who we are and how we can be contacted
- the services we are authorised to provide under our licence
- how we and our staff are paid
- any relevant associations or relationships we have
- how complaints are dealt with; and
- the compensation arrangements we have in place.

The Document contains information about significant benefits, risks, fees and other charges and other information about the Transaction.

### Financial services we are licensed to provide

We hold an Australian Financial Services Licence, which authorises us to provide financial product advice in relation to:

- Interests in managed investments schemes (excluding investor directed portfolio services)
- Securities (such as shares and debentures).

### Our responsibility to you

We provide financial product advice when engaged to prepare a report in relation to a transaction relating to one

of these types of financial products. You have not engaged us directly but have received a copy of the Report because of your connection to the Transaction.

We are responsible and accountable to you for ensuring that there is a reasonable basis for the conclusions in our Report.

### General Advice

Our report only contains general advice, because it has been prepared without taking into account your personal objectives, financial situation or needs.

You should consider the appropriateness of the general advice in our Report having regard to your circumstances before you act on our Report.

You should also consider the other parts of the Document before making any decision in relation to the Transaction.

### Fees we may receive

We charge fees for preparing reports. These fees will usually be agreed with, and paid by, the financial product issuer. Fees are agreed on either a fixed fee or a time cost basis. In this instance, CWT has agreed to pay us \$140,000 for preparing the Report.

KPMG and its officers, employees, representatives, related entities and associates will not receive any other fee or benefit in connection with the provision of the Report.

### Referrals

We do not pay commissions or provide any other benefits to any person for referring customers to us in connection with the reports that we are licensed to provide.

### Associations and relationships

Through a variety of corporate and trust structures KPMG is controlled by and operates as part of KPMG's



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Australian professional advisory and accounting practice (the **KPMG Partnership**). Our directors may be partners in the KPMG Partnership.

From time to time KPMG, the KPMG Partnership and related entities (**KPMG entities**) may provide professional services, including audit, tax and financial advisory services, to companies and issuers of financial products in the ordinary course of their businesses.

KPMG entities have provided, and continue to provide, a range of advisory services to the Company. Over the past two years professional fees of \$253,750 have been received from the Company. None of those services have related to the Transaction or alternatives to the Transaction. KPMG entities have not provided any advisory services to the bidder during the last two years.

No KPMG entity, and no individual involved in the preparation of the Report, has any interest in the Company or CKLS.

**Remuneration or other benefits received by our representatives**

KPMG officers, employees and representatives receive a salary or a partnership distribution from the KPMG Partnership. Our employees are eligible for bonuses based on overall productivity but not directly in connection with any engagement for the provision of a report.

**Complaints resolution**

Internal complaints resolution process

If you have a complaint, please let us know. Formal complaints should be sent in writing to The Complaints Officer, KPMG, PO Box H67, Australia Square, Sydney NSW 1213.

When we receive a written complaint we will record the complaint, acknowledge receipt of the complaint within 5 days and investigate the issues raised. As soon as practical, and not more than **45 days** after receiving the written complaint, we will advise you in writing of our response to your complaint.

External complaints resolution process

If we cannot resolve your complaint to your satisfaction within 45 days, you can refer the matter to the Financial Ombudsman Service (**FOS**) of which we are a member. FOS is an independent company that has been established to provide free advice and assistance to consumers to help in resolving complaints relating to the financial services industry.

Further details about FOS are available at the FOS website [www.fos.org.au](http://www.fos.org.au) or by contacting them directly at:

Address: Financial Ombudsman Service Limited,  
GPO Box 3, Melbourne Victoria 3001  
Telephone: 1300 78 08 08  
Facsimile: (03) 9613 6399  
Email: [info@fos.org.au](mailto:info@fos.org.au)

The Australian Securities and Investment Commission also has a freecall infoline on 1300 300 630 which you may use to obtain information about your rights.

Compensation arrangements

KPMG has professional indemnity insurance cover as required by the Corporations Act.

**Contact Details**

You may contact us using the contact details set out at the top of the letterhead on page 1.



## **6 Scope of report**

### **6.1 Purpose**

The Proposal will be implemented through the Scheme. The Takeovers Panel has issued GN15 outlining recommended procedures for such a transaction. This guidance note suggests that the Scheme notice should contain a report by an independent expert that states whether, in the expert's opinion, the terms of the Scheme are fair and reasonable.

In addition, the Directors of CLIL have requested that KPMG provide an opinion on whether the Proposal is in the best interests of the Non-Associated Unitholders.

### **6.2 Basis of assessment**

#### **6.2.1 Guidance**

##### *Fair and reasonable*

GN15 requires an independent expert to state whether the terms of the Proposal are fair and reasonable but the guidance note does not contain a definition of fair and reasonable. RG 111 "Content of expert reports", as issued by the ASIC, provides guidance in relation to the content of independent expert's reports prepared for transactions under Chapter 5, 6 and 6A of the Corporations Act. RG 111 refers to a 'control transaction' as being the acquisition of a controlling stake in a company that could be achieved by way of a takeover offer, compulsory acquisition, buy-outs, schemes of arrangement and capital reorganisations. The Proposal is in substance a takeover offer by CKLS of the securities in CWT and as such we have considered the analysis that should be undertaken by an expert for a takeover bid. In respect of control transactions, under RG 111, fair and reasonable are separate tests.

##### *In the best interests*

RG 111 also notes that where a transaction is implemented by way of a scheme of arrangement the form of analysis should be substantially the same as for a takeover bid, even though the wording of the opinion will be whether the Proposal is 'in the best interests of the members of the company'. As such the analysis undertaken by KPMG to determine whether the Proposal is fair and reasonable will also support our opinion as to whether the Proposal is in the best interests of Non-Associated Unitholders.

#### **6.2.2 Fairness**

RG 111 defines an offer as fair when the value of the consideration is equal to or greater than the value of the securities subject to the offer. The comparison should be made assuming 100% ownership of the 'target' and irrespective of whether the consideration is scrip or cash. In addition the expert should not consider the percentage holding of the 'bidder' or its associates in the target when making this comparison.

Accordingly, KPMG has assessed whether the Proposal is fair by estimating the market value of a CWT unit (assuming 100% control) and comparing this value with the estimated market value of the consideration offered.

Market value is commonly defined as the value that a hypothetical prudent purchaser, who is willing but not anxious buyer, would be prepared to pay a seller, who is willing but not anxious to sell a given asset, in



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circumstances where both the buyer and seller have full access to all relevant operational and financial information. Market value typically excludes 'special value' which is the additional value (over and above market value) that particular acquirers may be prepared to pay for a business who can achieve unique synergies or other benefits not generally available to other market participants. Our valuation of CWT has excluded 'special value'.

### **6.2.3 Reasonableness**

According to RG 111 (in respect of control transactions), an offer is reasonable if it is fair. However an offer can also be reasonable even if it is not fair if the expert believes that there are sufficient reasons for unitholders to accept the offer in the absence of any higher bid before the close of the offer. To assess the reasonableness of the Proposal KPMG has considered the following factors:

- the current issues facing CWT
- alternative options available
- advantages and disadvantages and other considerations of the Proposal
- implications if the Proposal is not approved.

### **6.3 Best interests**

According to RG 111.17 to 111.19:

- if an expert would conclude that a proposal was 'fair and reasonable' if it was in the form of a takeover bid, it will also be able to conclude that the scheme 'is in the best interests of the members of the company'
- if an expert would conclude that the proposal was 'not fair but reasonable' if it was in the form of a takeover bid, it is still open to the expert to also conclude that the scheme is 'in the best interests of the members of the company'
- if an expert concludes that a scheme proposal is 'not fair and not reasonable', then the expert would conclude that the scheme is not in the best interests of the members of the company.

### **6.4 Limitations and reliance on information**

In preparing this report and arriving at our opinion, we have considered the information detailed in Appendix 2 to this report. Nothing in this report should be taken to imply that KPMG has verified any information supplied to us, or has in any way carried out an audit of the books of account or other records of CWT for the purposes of this report.

Further, we note that an important part of the information base used in forming our opinion is comprised of the opinions and judgements of management. In addition, we have also had discussions with CWT's management in relation to the nature of the CWT's business operations, its specific risks and opportunities, its historical results and its prospects for the foreseeable future. This type of information has been evaluated through analysis, enquiry and review to the extent practical. However, such information is often not capable of external verification or validation.





We have no reason to believe that any material facts have been withheld from us but do not warrant that our inquiries have revealed all of the matters which an audit or extensive examination might disclose. The statements and opinions included in this report are given in good faith, and in the belief that such statements and opinions are not false or misleading.

#### **6.5 Reliance on technical specialist**

ASIC Regulatory Guides envisage the use of independent technical specialists when valuing specific assets. Due to the nature of CWT's assets, CWT in consultation with KPMG commissioned specialist valuations of CWT's wine assets by independent specialist valuers. These valuers included Colliers, Knight Frank, TelferYoung and Crighton Stone (collectively the Independent Specialists). The Independent Specialists were all engaged for the purposes of this IER.

In undertaking an analysis of the value of CWT, we have considered and relied upon the recent valuations undertaken by the Independent Specialists, all of which have previously valued CWT's wine assets for financial reporting purposes. Management of CLIL have confirmed that these parties have not provided strategic advice in relation to the Proposal. We have satisfied ourselves that the Independent Specialists' qualifications and independence from CWT, CLIL and CKLS meet the qualification and independence criteria prescribed by ASIC and have placed reliance on their valuations. The Independent Specialists have each consented to such reliance.

The Independent Specialists were briefed by CWT that their valuations should be based on the following conditions:

- the value of the property at the date of valuation is the Fair Value (FV) at which the property may reasonably be expected to be sold
- a willing, not anxious, buyer and seller
- a reasonable period has been allowed for the sale, having regard to the nature of the property and the state of the market for property sales of the same kind
- that the FV be in accordance with Accounting Standards AASB 140 Investment Property and AASB 141 Agriculture.

#### **6.6 Disclosure of information**

In preparing this report, KPMG has had access to all financial information considered necessary in order to provide the required opinion. CWT has requested KPMG and the Independent Specialists to limit the disclosure of some commercially sensitive information relating to CWT and its subtrusts which we have relied upon in forming our opinion. This request has been made on the basis of the commercially sensitive and confidential nature of the operational and financial information of the operating entities comprising the CWT group of trusts.



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## **7 The wine industry**

In considering the operations of CWT's business, we have summarised below some issues impacting the Australian and New Zealand wine industries which are having a direct impact upon property values.

### **7.1 Structural oversupply**

As discussed in further detail below, the Australian and New Zealand wine and vineyard sectors are currently experiencing an oversupply of wine grapes. This oversupply has caused a steep decline in grape prices leaving growers struggling to remain profitable. In turn, an oversupply of wine has caused export prices to decline and induced widespread discounting by retailers. The industry is moving to correct this imbalance through measures such as cancelling grape supply contracts, removing vines and imposing yield restrictions.

#### **7.1.1 Vineyard capacity**

Throughout the 1990s and into the early 2000s strong domestic and increasing export demand for wine encouraged significant and rapid vineyard expansion in Australia. Increases in capacity exceeded increases in demand leading to a situation in which there was an oversupply of wine grapes. In 2009, industry experts suggested that at least 20% of bearing vines, primarily in cool climate regions, were surplus to requirements<sup>1</sup>. Similarly, in New Zealand large-scale planting, predominantly of the Sauvignon Blanc variety, during the early 2000s has generated an oversupply of New Zealand grapes.

To remedy the situation the Australian industry has undertaken the removal of vineyards in non-viable regions and in oversupplied varieties. Vineyard removal began in 2008 with the majority of the reduction in warm climate regions due to the continuing low availability of irrigation water. To date it is estimated that around 8,000 hectares (ha) of vines have been removed<sup>2</sup> and that it is necessary to remove a further 20,000 ha in order to reach a sustainable level of around 120,000 to 130,000 ha and bring about a revival in the industry<sup>3</sup>. While the New Zealand sector is yet to commence vineyard removal, it has been able to reduce grape production by 8% from 2009 to 2010 through the enforcement of yield restrictions<sup>4</sup>.

#### **7.1.2 Global wine consumption**

Australia exports around 63% of its wine production with key export markets including the UK, US, China and Canada. Exports, primarily to the UK and Australia, account for around 65% of New Zealand wine production, with Sauvignon Blanc representing 76% of exports in 2009. Exporters are currently experiencing downward pressure on wine prices as the demand for Australian and New Zealand wines contends with reduced levels of discretionary spending resulting from the global financial crisis and oversupply in the global wine market. This situation is exacerbated further by the recent strengthening of the Australian dollar which reduces the cost competitiveness of Australian wines, particularly compared to other new world exporters such as Chile and Argentina whose currencies have not appreciated at the same rate.

<sup>1</sup> Winemakers' Federation of Australia (WFA), "Wine industry must confront the reality of oversupply", published 19 November 2010

<sup>2</sup> Australian Bureau of Statistics (ABS), "Vineyard Estimates", 13 October 2010

<sup>3</sup> CWT FY10 Results Presentation, 27 August 2010

<sup>4</sup> CWT FY10 Results Presentation, 27 August 2010



## **7.2 Industry profitability**

### **7.2.1 Grape prices and intake**

In Australia an oversupply, particularly of cool climate wine grapes, has resulted in large price-cutting among growers to ensure sale. In 2010, average Australian grape prices were around 35% lower<sup>5</sup> compared to 2008 and have been below the production costs of some growers. In New Zealand, growers have experienced downward pressure on prices since 2008 with average grape prices falling approximately 40%<sup>6</sup>.

Wine companies' rebalancing their supply of grapes with wine demand and the availability of low priced grapes on the spot market, has led to the decision of many wineries to cancel their supply contracts with grape growers. Furthermore, the oversupply of cool climate varieties has shifted demand from warm climate grapes which may lead to a shortage in warm climate grape vineyards.

### **7.2.2 Wine prices and production**

The oversupply of grapes has had a knock-on effect in the wine market. Overproduction of wine has put downward pressure on wine prices and led to excess inventory as demand has not increased as a result of the lower prices. In 2009, a surplus of over 100 million cases existed in Australia. At the same time, Australia was producing around 20 to 40 million more cases per year of wine than it was selling. Exporters experienced an average price decrease of 14% between 2009 and 2010, and wine exports fell by 8 million cases, or 21% of value, since their peak in October 2007 with the greatest decrease being among higher value wines<sup>7</sup>. In response to industry conditions, and assisted by climate factors, producers have curtailed production, for example, the 2010 wine intake by Australian vineyards decreased to 1.5 million tonnes, which was 12% down from the 2009 intake<sup>8</sup>. Similarly, while New Zealand exports rose 26% in 2010, average prices decreased by 17%<sup>9</sup>.

### **7.2.3 Vineyard values**

The issues discussed above have impacted the value of vineyards. In general, vineyard values reflect their replacement value, grape prices, forward exchange rates and the term of the grape contract held by the grower or property lease earnings. A combination of declining grape prices and vineyard removals has significantly reduced valuations. It is estimated that to date vineyard values have declined approximately \$1.5 billion across Australia<sup>10</sup>. These write-downs have left some industry participants with little debt covenant headroom making it necessary to recapitalise.

## **7.3 Outlook**

The industry has begun a process of restructuring in order to realign demand and supply forces. Over the next few years, growth in wine production is expected to slow, reducing grape inventories to more sustainable levels<sup>11</sup>. This will likely place upward pressure on prices and improve industry profitability. Measures such as

<sup>5</sup> CWT FY10 Annual Report

<sup>6</sup> CWT FY10 Annual Report

<sup>7</sup> WFA, "Wine industry must confront the reality of oversupply", published 19 November 2010

<sup>8</sup> Australian Bureau of Statistics (ABS), "Vineyard Estimates", 13 October 2010

<sup>9</sup> CWT FY10 Annual Report

<sup>10</sup> CWT Presentation, 28 June 2010

<sup>11</sup> IBISWorld, "Wine Manufacturing in Australia" (July 2010)



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implementing yield restrictions and cancelling grape supply contracts will also help induce a correction. In terms of exports, as the global economy shows signs of recovery demand for wine will gradually strengthen. New Zealand is expected to recover before Australia due to the popularity of Sauvignon Blanc in export markets. In addition, export opportunities exist within the Asian emerging markets, but this will take time and investment to develop.

## **8 Profile of Challenger Wine Trust**

### **8.1 Background**

Established on 19 February 1998, CWT (formerly Beston Wine Industry Trust and then Challenger Beston Wine Trust) listed on the ASX on 2 July 1999. On 17 December 1999, the manager, Beston Pacific Vineyard Management Limited was acquired by CFSG. The operations of CWT are conducted through a number of subtrusts. From 1 July 2004, the CWT brand was formally adopted.

CWT was formed to provide capital solutions to wine industry participants. Wine growers generally face large capital commitments in owning wine related land and infrastructure. CWT (through a number of controlled entities) directly invests in these wine related assets and leases them back to the wine company or grower to provide the wine company or grower access to their capital for other purposes. At the end of the lease term, the tenant has the right to acquire the vineyard, extend the lease or allow the lease to lapse. If the lease lapses, CWT can either sell the property or lease it to another wine industry participant.

### **8.2 Overview of property portfolio**

At 30 June 2010, CWT held a total property portfolio of 21 vineyards across Australia and New Zealand. Set out in the table below is CWT's portfolio of vineyards, and key attributes at 30 June 2010 and 31 December 2010.



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**Table 3: Portfolio assets**

Property	Owned by	Value	Value			WALE	Yield (%)	FY10 rental income (\$m)
		June 2010 (\$m)	Dec 2010 (\$m)	Total area (ha)	% planted	Oct 2010 (years)		
<b>Australian portfolio</b>								
<i>Cool climate vineyards</i>								
Chapel Vineyard <sup>a</sup>	CWT	1.3	0.8 <sup>^</sup>	37	78%	0.7	1.6%	0.02
Corryton Park Vineyard	CWT	2.5	2.5	54	78%	2.3	12.5%	0.31
Miamba Vineyards <sup>b</sup>	CWT	10.6	10.1 <sup>^</sup>	204	64%	4.8	12.8%	1.25
Richmond Grove & Lawsons Vineyards <sup>a</sup>	MST	32.0	26.1 <sup>^</sup>	573	84%	2.7	18.6%	4.81
Schuberts Vineyard <sup>a</sup>	CWT	5.6	5.4 <sup>^</sup>	109	68%	0.7	13.1%	0.34
Summers Vineyard	CWT	1.2	1.2	28	61%	2.3	12.0%	0.14
Hermitage Road Winery <sup>1</sup>	CWT	1.5	1.5	40	3%	1.9	15.2%	0.06
Poole's Rock Vineyard & Winery <sup>3c</sup>	CWT	5.7	5.0 <sup>^</sup>	21	48%	4.1	17.2%	0.86
Sirens Vineyard	SCT	2.1	2.1	66	67%	1.6	14.8%	0.31
<b>Total cool climate</b>		<b>62.3</b>	<b>54.7</b>	<b>1,132</b>	<b>73%</b>	<b>2.9</b>	<b>16.0%</b>	<b>8.10</b>
<i>Warm climate vineyards</i>								
Qualco East Vineyard	MST	6.5	6.5	214	81%	5.1	15.6%	1.00
Waikerie Vineyard <sup>a</sup>	CWT	1.5	1.2 <sup>^</sup>	43	91%	2.5	20.7%	0.19
Balranald Vineyard <sup>a</sup>	MST	23.8	21.8 <sup>^</sup>	547	85%	6.1	14.3%	3.09
Cocoparra & Woods Vineyards <sup>e</sup>	CWT	10.7	10.0 <sup>^</sup>	561	47%	2.5	11.6%	1.13
Gundagai Vineyard <sup>2</sup>	CWT	2.4	1.4	331	71%	0.0	Na	2.03
Stephendale Vineyard <sup>a</sup>	CWT	23.8	22.8 <sup>^</sup>	666	95%	6.9	12.0%	2.70
Whitton Vineyard	CWT	4.2	4.2	102	95%	4.5	10.4%	0.36
Del Rios Vineyard <sup>b</sup>	MST	43.6	43.0 <sup>^</sup>	1,048	86%	5.7	15.8%	6.68
<b>Total warm climate</b>		<b>116.5</b>	<b>110.9</b>	<b>3,511</b>	<b>80%</b>	<b>5.6</b>	<b>14.0%</b>	<b>17.18</b>
<b>Total Australian portfolio</b>		<b>178.8</b>	<b>165.6</b>	<b>4,643</b>	<b>78%</b>	<b>4.6</b>	<b>14.6%</b>	<b>25.28</b>
<b>New Zealand portfolio</b>								
Crownthorpe Vineyard <sup>c</sup>	DT	19.6	13.3 <sup>^</sup>	361	81%	0.4	16.8%	2.24
Dashwood Vineyard <sup>d</sup>	DT	17.9	17.0 <sup>^</sup>	201	84%	2.0	9.9%	1.69
Gimblett Gravels Vineyards <sup>c</sup>	DT	4.7	3.5 <sup>^</sup>	44	89%	0.4	16.9%	0.59
Rarangi Vineyard <sup>d</sup>	DT	14.7	13.3 <sup>^</sup>	142	91%	3.9	9.7%	1.28
<b>Total New Zealand portfolio</b>		<b>56.8</b>	<b>47.1</b>	<b>747</b>	<b>84%</b>	<b>1.7</b>	<b>12.3%</b>	<b>5.80</b>
<b>Total</b>		<b>235.6</b>	<b>212.4</b>	<b>5,390</b>	<b>79%</b>	<b>4.0</b>	<b>14.1%</b>	<b>31.08</b>

Source: CWT 2010 Annual Report and Explanatory Memorandum

Note 1: Marketed for lease or sale

Note 2: Land component sold in September 2010. December value reflects water assets which were retained

Note 3: Contracts exchanged 1 December 2010

Note 4: Valuations were performed at December 2010. Non-marked valuations were performed at June 2010

WALE: Weighted average lease expiry

MST: McGuigan Simeon Trust

SCT: Southcorp Trust

DT: Delegates Trust

Valuations were performed by: (a) Colliers, (b) Knight Frank, (c) TelferYoung, (d) Crighton Stone (e) Directors (internal)

Table may not add due to rounding



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In relation to the table above, we note:

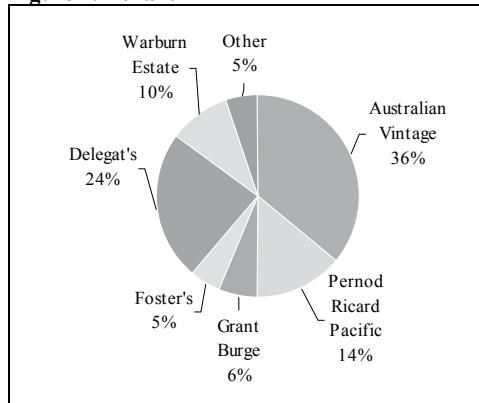
- all properties are 100% owned by CWT and leased back to the individual grape grower or wine maker. These properties are held under four trusts being CWT itself and three subtrusts ultimately controlled by CWT. The subtrusts are the Delegates Trust (DT), Southcorp Trust (SCT) and McGuigan Simeon Trust (MST)
- 17 of 21 properties, representing 85% of CWT's portfolio by value were independently revalued at 30 June 2010. The remaining 4 properties were independently revalued at 31 December 2009. The value of the portfolio decreased by 11% over the financial year (FY) ended 30 June 2010 (FY10)
- the average passing rental yield of the portfolio is 14.1%. The high yields on the portfolio reflect the reduction in property valuations and lease rents set when the property values were high. It is expected when properties are up for renewal that these lease rents will be under pressure to substantially reduce to reflect the lower profitability of the industry resulting from the oversupply in grapes and associated reduced property values
- CWT had agreed terms to sell its Gundagai Vineyard (excluding the high security water rights). At 30 June 2010, the land component had been written down to its negotiated sales price of \$1 million
- CWT has agreed to sell the Poole's Rock Vineyard and Winery for \$5 million. This transaction is expected to settle in December 2010. The carrying value of this property as at 30 June 2010 was \$5.7 million
- 12 of 21 properties, representing 85% of CWT's portfolio by value were independently revalued at 31 December 2010.



### 8.2.1 Tenant profile and climate diversification

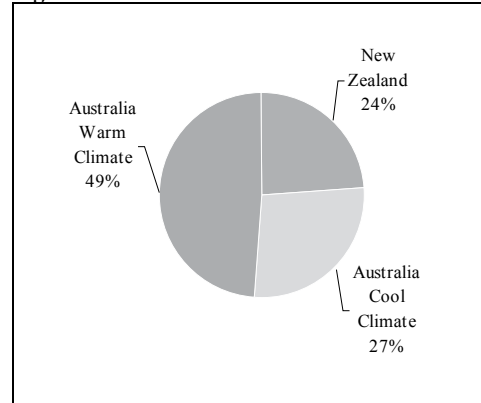
At 30 June 2010, CWT's portfolio was well diversified by both tenants and by climate (by fair value) as set out in the figures below:

**Figure 4: Tenant mix**



Source: CWT FY10 Results Presentation, 27 August 2010

**Figure 5: Climate diversification**



Source: CWT FY10 Results Presentation, 27 August 2010

In relation to the figures above, we note:

- in the majority of cases, CWT enters into leases with tenants who maintain their own wine label. At 30 June 2010, two tenants had grape contracts (Gundagai and Chapel vineyards)
- whilst the majority of CWT's property portfolio is located in Australia (76%), the portfolio is evenly diversified across warm climate (49%) and the cool climate vineyards in Australia (27%) and New Zealand (24%).

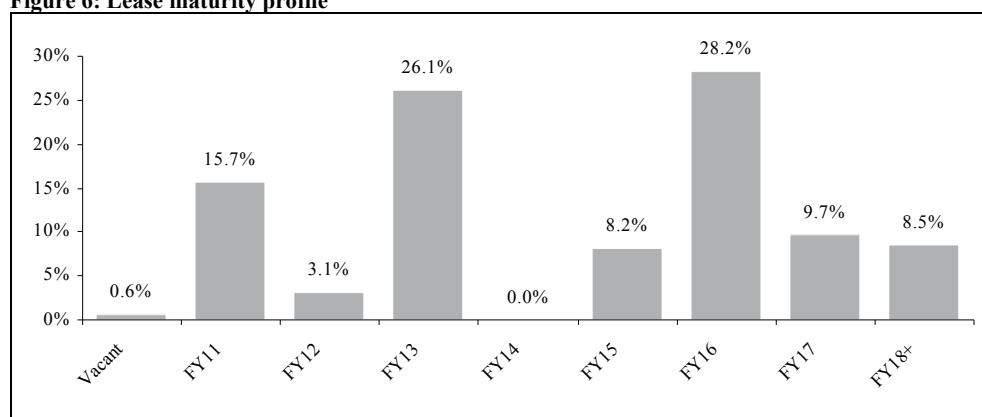
### 8.2.2 Lease maturity

CWT's property portfolio had a weighted average lease expiry (WALE) of 4.1 years at 30 June 2010. Set out in the figure below is the lease expiry profile of the properties held (by value) at 30 June 2010.



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**Figure 6: Lease maturity profile**



Source: CWT 2010 Annual Report

The figure above illustrates almost half (44.9 percent) of the portfolio's existing leases will expire in the next three years. CWT will be negotiating new leases for a large portion of their portfolio during a period of lower profitability in the wine industry and may be under pressure to reduce rents compared to historical levels to maintain full occupancy.

### 8.2.3 Vacancy rates

At 30 June 2010, CWT's property portfolio was 99.4 percent occupied. The vacant land relates to the Hermitage Road Winery that is currently being marketed for lease or sale.

### 8.3 Responsible entity and management fees

CLIL executed a management agreement on 12 April 2006 to engage CMSL as the manager of CWT (the Manager). As the management agreement was due to expire on 1 January 2011, CLIL has agreed to extend the agreement on the same terms. This relationship may be terminated should CLIL provide 12 months written notice to CMSL of their intention to terminate the agreement, the Manager becomes insolvent or if CFSG and/or controlled entities cease to hold at least 50 percent of the issued share capital of the Manager.

In accordance with the constitution, as payment for their services, the Manager is entitled to an annual fee equal to the residual of:

- 0.65% of the total asset value of CWT up to and including \$1 billion plus 0.45% of the total asset value in excess of \$1 billion
- 1.5% of the value of capital acquisitions and developments
- less responsible entity fees amounting to \$25,000 per month. These fees are assessed at the end of each month.

The Manager is also entitled to receive up to 1% per annum of the annual gross income for managing the vineyards, payable on a monthly basis.



## 8.4 Financial statements

### 8.4.1 Historical financial performance

Set out in the table below is the audited consolidated income statement of CWT for FY09 and FY10.

**Table 4: CWT income statement**

<b>\$'000</b>	<b>FY09</b>	<b>FY10</b>
Rental income	32,783	31,075
Property related expenses	(163)	(147)
<b>Net property income</b>	<b>32,620</b>	<b>30,928</b>
Interest income	712	249
Finance costs	(13,184)	(12,614)
Responsible entity & manager fees	(2,350)	(2,008)
Operating expenses	(1,294)	(1,269)
<b>Profit from operating activities before tax</b>	<b>16,504</b>	<b>15,286</b>
Income tax expense	(367)	(120)
<b>Profit from operating activities after tax</b>	<b>16,137</b>	<b>15,166</b>
Impairment of non-current assets	(813)	(4,118)
Net fair value (FV) movement of non-current assets sold during the year	60	117
Net FV movement of non-current assets held at end of the year	(39,715)	(26,179)
Foreign exchange gain	-	305
<b>Net (loss)/profit</b>	<b>(24,331)</b>	<b>(14,709)</b>
<i>Basic &amp; diluted earnings per ordinary unit (cents)</i>	<i>(14.29)</i>	<i>(8.25)</i>

Source: CWT 2010 Annual Report

In relation to the table above, we note:

- rental income arising on investment properties is recognised in accordance with the provisions of the lease with basic rents generally increased on an annual basis
- rental incomes decreased by \$1.7 million (5.2%) in FY10, primarily due to the impact of rental relief provided to certain Australian Vineyards Limited (AVG) properties, a reduction in rental on Chapel Vineyard and a reduction of rental income from properties whose leases expired or were sold during FY10 (we note that for the two months to August 2010, CWT revenues are performing to budget)
- finance costs decreased by 4.3% to \$12.6 million primarily due to lower interest swap rates and reduced debt balances. A substantial part of the swap portfolio was reset in June 2009 at a significantly lower weighted average rate. The debt balance reduced by \$9 million financed through a number of capital management initiatives including property sales, retention of distributions and an underwritten DRP
- impairment of non-current assets amounted to \$4.1 million in FY10, reflecting the reduction in the recoverable amount assessed by independent valuers regarding certain items of plant and equipment
- total unrealised property revaluation decrements amounted to \$26.2 million in FY10, reflecting the deterioration of the wine industry and underlying vineyard property assets. The majority of these devaluations occurred in CWT's New Zealand properties and the Gundagai Vineyard property. Property



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valuations include the value of intangible assets for separable and tradeable water rights (measured at cost less impairment).

#### 8.4.2 Historical financial position

Set out in the table below is the audited consolidated balance sheet of CWT at 30 June 2009 and 30 June 2010 and pro-forma updated for specific items as detailed below.

**Table 5: CWT balance sheet**

At \$'000	30 June 2009	30 June 2010	Pro-forma
Cash & cash equivalents	5,841	11,001	1,800
Trade & other receivables	1,897	1,469	
Prepayments	495	357	
Derivatives	159	280	
Investment properties held-for-sale	-	1,000	
Other	-	300	1,800
<b>Total current assets</b>	<b>8,392</b>	<b>14,407</b>	<b>3,600</b>
Investment properties	132,146	125,058	203,700
Vines	97,201	77,707	
Intangible assets	21,786	20,700	
Plant & equipment	5,978	2,175	
Derivatives	69	-	
<b>Total non-current assets</b>	<b>257,180</b>	<b>225,640</b>	<b>203,700</b>
<b>Total assets</b>	<b>265,572</b>	<b>240,047</b>	<b>207,300</b>
Trade & other payables	3,148	3,819	5,600
Rent received in advance	888	1,326	
Provision for distribution	2,044	1,908	
Derivatives	1,378	2,121	
Interest bearing liabilities	2,163	65,379	48,900
<b>Total current liabilities</b>	<b>9,621</b>	<b>74,553</b>	<b>54,500</b>
Derivatives	6,919	6,089	8,000
Interest bearing liabilities	147,101	74,907	74,900
<b>Total non-current liabilities</b>	<b>154,020</b>	<b>80,996</b>	<b>82,900</b>
<b>Total liabilities</b>	<b>163,641</b>	<b>155,549</b>	<b>137,400</b>
<b>Net assets</b>	<b>101,931</b>	<b>84,498</b>	<b>69,900</b>
Contributed equity	145,644	150,928	
Retained earnings	(32,064)	(54,216)	
Reserves	(11,649)	(12,214)	
<b>Total equity</b>	<b>101,931</b>	<b>84,498</b>	<b>69,900</b>

Source: CWT 2010 Annual Report



In relation to the table above, we note:

- the cash and cash equivalents balance includes a \$7.2 million term deposit set off. This term deposit relates to security required by one of CWT's lenders, the National Australia Bank Limited (NAB)
- investment properties declined by \$7 million during FY10. Approximately 85% of the portfolio (by value) was revalued by independent valuers at 30 June 2010, with the remainder valued at 31 December 2009. This devaluation of investment properties reflects current market yields. CWT carry properties at an encumbered value inclusive of any above market rents to be received by CWT until the end of the current lease periods. Above market lease rents on the investment properties reflect leases set during more favourable market conditions. As such, as a larger portion of the leases are renegotiated the encumbered value will progressively move towards the implied unencumbered value (market value)
- vines are held at fair value. The fair value of vines are determined by discounting the expected future cash flows from the vines. These valuations are performed by independent accredited industry valuers at least once every 18 months. Vines have declined by \$19.5 million during FY10 due to previously discussed industry conditions
- intangible assets reflect separable and tradeable water rights that provide the owner with an allocation of irrigation water as long as the rights are held. Intangibles are held at cost less impairment and not amortised as water licences are considered to have indefinite useful lives. If these water rights were held at fair value, intangible assets would increase by \$11.0 million and \$8.7 million for FY09 and FY10 respectively
- if water rights were recorded at fair value, pro-forma non-current assets would increase to \$212.4 million
- the impact of the fair value of water rights on NIV is set out in Table 7
- the auditors of CWT have provided an unqualified audit opinion with an emphasis of matter in regards to CWT's current liabilities exceeding the current assets by \$60.2 million and the requirement to refinance \$58.2 million of its secured bank debt within 12 months. Based on the review of capital management alternatives by the Board, the Directors have concluded that there are reasonable grounds to believe that CWT will be able to continue as a going concern and meet their debts when they fall due
- refer to section 8.4.2.1 for further discussion on interest bearing liabilities (debt)
- the pro forma balance sheet reflects the 30 June 2010 audited financial statements updated to reflect:
  - the valuations prepared by the Independent Specialists
  - retention of distributions (applied against current debt)
  - foreign exchange movements
  - property sales.



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#### 8.4.2.1 Debt

During FY10, debt reduced by \$9 million to \$134.7 million and, post financial year end, a further \$7.2 million was repaid. Of this total, \$65.4 million was reclassified as current liabilities due to a \$58.2 million debt facility maturing in May 2011 and an additional \$7.2 million of debt expected to be pre-paid in the first quarter of 2011. Set out in the table below is a summary of key terms relating to CWT's debt facilities at 30 June 2010.

**Table 6: CWT debt facilities as at 30 June 2010**

Facilities	Amount (m)	Expiry	LVR covenant	LVR Position	Headroom on security value
<b>Facility 1 - Australia and New Zealand Banking Group Ltd (ANZ)</b>					
- Tranche 1 (\$)	\$11.1	May 2011	Debt to security value < 55%	54.1%	
- Tranche 1 (NZ\$)	NZ\$35.5	May 2011	Debt to security value < 55%	54.1%	
- Tranche 2 (\$)	\$3.5	May 2011	Debt to security value < 60%	56.7%	
- Tranche 2 (NZ\$)	NZ\$18.0	May 2011	Debt to security value < 60%	56.7%	
<b>Total Facility 1</b>	<b>\$58.2</b>		<b>Debt to security value &lt; 57%</b>	<b>55.0%</b>	<b>3.5%</b>
<b>Facility 2 - NAB</b>					
- (\$) *	\$55.8	May 2012	Debt <sup>^</sup> to security value < 60%	58.6%	
- (NZ\$)	NZ\$25.7	May 2012	Debt <sup>^</sup> to security value < 60%	58.6%	
<b>Total Facility 2</b>	<b>\$76.5</b>		<b>Debt<sup>^</sup> to security value &lt; 60%</b>	<b>58.6%</b>	<b>2.4%</b>
<b>Total debt</b>	<b>\$134.7</b>				

Source: CWT FY10 Full Year Results Presentation

\* includes term deposit offset of \$7.2 million

<sup>^</sup>: includes net fair value of hedge contracts

In relation to the table above, we note:

- an Australian dollar/New Zealand dollar exchange rate of 1.23 has been adopted
- CWT's overall 30 June 2010 LVR was 57.0% (including the \$7.2 million term deposit set off held in cash, but offset against debt for the purpose of LVR covenants), up from 54% at 31 December 2009
- CWT is required to maintain a weighted average LVR of less than 57% on the ANZ facility. This financial covenant is tested upon commissioning a new valuation as a result of the releasing of any property held as security. Security is represented by a first registered mortgage over each property in MST
- CWT is required to maintain an LVR of less than 60% on the NAB facility and maintain a minimum earnings before interest and tax cover ratio of 1.75 times and a minimum interest cover ratio of 2.0 times. The financial covenants in the NAB facility are tested every six months ending each 30 June and 31 December. Security for the facility is represented by a first registered mortgage over each property in the CWT, DT and SCT and fixed and floating charges over all assets and undertaking of each trust other than the MST
- at 30 June 2010, CWT had hedged over 83% of their interest rate exposures with an average of 64% over the life of the leases. CWT's interest rate hedging policy is to hedge 60% to 100% over the term of the lease, Swaps are aligned to lease dates rather than terms of debt due to the expectation of debt being refinanced on a continuing basis
- CWT's exposure to New Zealand dollar debt provides a natural hedge for the New Zealand property book





- as at 31 October 2010 the amount owing to ANZ had reduced to approximately \$56.4 million as a result of foreign exchange movements. In addition, at that date, out of the money foreign exchange swap contracts totalling approximately \$7.2 million were also payable to ANZ. As a result the ANZ debt requiring refinancing as at May 2011 approximates \$64 million.

In its update to the ASX on 10 June 2010, CWT announced it was reviewing a number of capital management initiatives to reduce gearing. This review was conducted as the management of CWT expected a continuation of declining valuations of its property portfolio during FY11. Any further decline in valuations will further reduce any headroom CWT may have in relation to its existing debt covenants or cause a breach of those covenants.

Since the update, CWT has been in continuous dialogue to renegotiate its debt facilities and has evaluated alternative plans for the business, including a recapitalisation through a rights issue. We note that whilst there was some interest in sub-underwriting a rights issue, there was insufficient demand for a rights issue of a size to meet CWT's requirements to be underwritten.

Without implementing a sustainable plan to reduce gearing, CWT may be forced to realise some assets in its investment portfolio at a discount to carrying value to repay debt, further reducing CWT's NIV.

#### **8.4.2.2 NIV**

A key difference between CWT and other property trusts is the inclusion of value pertaining to the ownership of water rights. The NIV reflects the value attributable to the water rights by adjusting the net asset value (which recognises the water rights at cost less impairment) of the business by a fair value increment for water rights as set out in the table below.

**Table 7: NIV**

<b>At \$m</b>	<b>30 June 2009</b>	<b>30 June 2010</b>	<b>Pro-forma</b>
Net tangible assets (NTA)	80.1	63.6	49.0
Add: Water rights (at cost)	21.8	20.9	20.9
Net Asset Value (NAV)	101.9	84.5	69.9
Add: Water rights fair value increment	11.0	8.7	8.7
<b>NIV</b>	<b>112.9</b>	<b>93.2</b>	<b>78.6</b>
<i>NIV (cents per unit (cpu))</i>	<i>66</i>	<i>49</i>	<i>41</i>

Source: CWT 2010 Annual Report

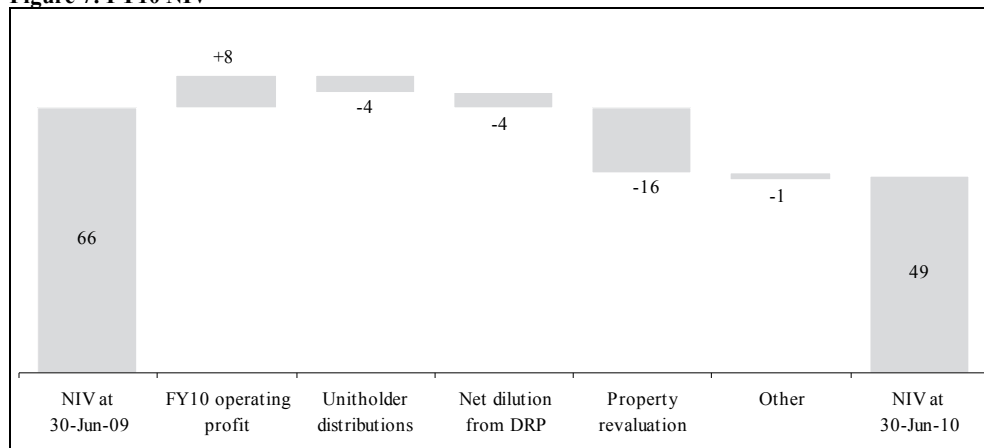
In relation to the table above, we note:

- water rights are independently valued in conjunction with property valuations
- the reduction in NIV since 2009 largely reflects the reduction in CWT's property portfolio amounting to 16 cpu in FY10. The key drivers of the change in NIV in FY10 are set out in the figure below



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**Figure 7: FY10 NIV**



Source: CWT FY10 results presentation

- in relation to the pro forma NIV we note:
  - properties comprising 85% of CWT's property portfolio were valued by the Independent Specialists
  - the variance to the values recorded as at 30 June 2010 was a decrement of \$18.5 million or 9.4%
  - the most significant decreases in value were at the Padthaway and Crownthorpe properties, reflecting over 62% of the downward movement indicating that, on average, the remaining properties declined in value by 4.8%
  - the NIV incorporates the contracted sale price of Poole's Rock
  - based upon the pro forma balance sheet and the opinions of the Independent Specialists, the NIV of CWT would be 41.2 cpu (41.5 cpu excluding the impact of transaction costs)
  - the Directors of CLIL have considered the results of the Independent Specialists and the implications for that part of the property portfolio not independently valued. As a result, the Directors of CLIL have formed the opinion that a further reduction in property values in the order of \$1.4 million (approximately 0.75 cpu in NIV) should be applied to the properties not valued by the Independent Specialists. We do not consider such an adjustment unreasonable. For example, if the 4.8% average value decline were to be applied to the balance of the portfolio (excluding the Pooles Rock property) NIV would decline by a further \$1.43 million or approximately 0.75 cpu.



### 8.4.3 Cash flow statement

Set out in the table below is the audited consolidated cash flow statement of CWT for FY09 and FY10.

**Table 8: CWT cash flow statement**

<b>\$'000</b>	<b>FY09</b>	<b>FY10</b>
<b>Cash flows from operating activities</b>		
Rental received	30,764	31,055
Interest received	712	249
Finance costs paid	(12,593)	(11,939)
Payments to suppliers	(3,643)	(2,531)
Derivative payments	(4,372)	(755)
Income tax paid	(290)	-
<b>Net cash flows from operating activities</b>	<b>10,578</b>	<b>16,079</b>
<b>Cash flows from investing activities</b>		
Proceeds from disposal of property	2,662	2,434
Payments for maintenance capital expenditure, vines, properties & developments	(481)	(1,094)
<b>Net cash flows from investing activities</b>	<b>2,181</b>	<b>1,340</b>
<b>Cash flows from financing activities</b>		
Proceeds from borrowings	638	-
Repayment of borrowings	(7,088)	(9,980)
Derivative option fee paid	(120)	-
Distributions to Unitholders	(14,074)	(2,044)
Equity raising costs	-	(252)
<b>Net cash flows (used in)/from financing activities</b>	<b>(20,644)</b>	<b>(12,276)</b>
<b>Net increase/(decrease) in cash &amp; cash equivalents</b>	<b>(7,885)</b>	<b>5,143</b>
Effects of foreign exchange	36	17
Cash & cash equivalents at beginning of year	13,690	5,841
<b>Cash &amp; cash equivalents at end of year</b>	<b>5,841</b>	<b>11,001</b>

Source: CWT 2010 Annual Report

In relation to the table above, we note:

- the increase in cash flows from operating activities reflect a reduction in finance costs paid due to a \$9 million debt reduction, payments to suppliers and derivative payments in relation to resetting CWT's hedge positions
- distributions paid in cash reduced from \$14.1 million in FY09 to \$2.0 million in FY10. We note the \$2.0 million paid in FY10 related to the distribution declared in June 2009. The reduction in distributions reflected the employment of CWT's capital management initiatives in FY10. In conjunction with this, a distribution reinvestment plan was reactivated on 30 November 2009 for the 31 December 2009 interim distribution to further retain cash in CWT.



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## 8.5 Units on issue and ownership

At 31 October 2010, CWT had 190,759,842 units on issue. Set out in the table below is a summary of the substantial unitholders at 31 October 2010.

**Table 9: Substantial Unitholders**

Substantial unitholders	Units held ('000)	Percentage of units on issue
Challenger Financial Services Group Limited	52,923	27.7%
Commonwealth Bank of Australia	10,330	5.4%
<b>Total substantial unitholders</b>	<b>63,253</b>	<b>33.1%</b>
Other unitholders	127,507	66.9%
<b>Total units on issue</b>	<b>190,760</b>	<b>100.0%</b>

Source: CWT

As summarised in the table above, CFSG and Commonwealth Bank of Australia are the largest unitholders with 27.7% and 5.4% percent of the units on issue respectively. There are no other unitholders that hold more than 5% of units on issue. In total, CWT has 3,224 unitholders at 31 October 2010, as set out in the table below.

**Table 10: Spread of Unitholders**

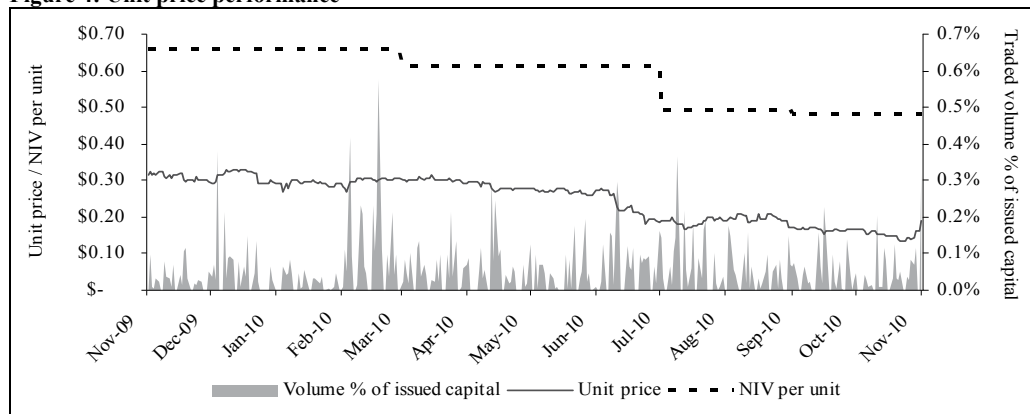
Range	Number of holders	Number of units ('000)	Percentage of units
1 to 1,000	130	56	0.0%
1,001 to 5,000	623	2,055	1.1%
5,001 to 10,000	670	5,426	2.8%
10,001 to 100,000	1,611	48,919	25.6%
100,001 and over	190	134,304	70.5%
<b>Total</b>	<b>3,224</b>	<b>190,760</b>	<b>100.0%</b>

Source: CWT

## 8.6 Unit price and volume history

The figure below illustrates the historical closing trading price of CWT, the volume traded (as a percentage of issued capital) and the reported NIV per unit over the year to 1 November 2010.

**Figure 4: Unit price performance**



Source: IRESS and CWT presentations and announcements

In relation to the figure above, we note:

- over 12 months to 1 Nov 2010, CWT traded at a (intra day) high of \$0.35 and low of \$0.14
- over this same period, CWT has traded at an average discount to NIV of 58%.

### 8.6.1 Volume weighted average price and liquidity analysis

Set out in the table below is an analysis of the volume weighted average price (VWAP) and historical liquidity of the CWT units up to the close of trade on 1 November 2010, being the last trading day prior to CWT entering a trading halt.

**Table 11: VWAP analysis to 1 November 2010**

Period	Price (high)	Price (low)	Price VWAP	Cumulative volume ('000)	% of issued capital
1 week	0.19	0.14	0.16	1,169	0.6
1 month	0.19	0.14	0.16	2,895	1.5
3 months	0.21	0.14	0.17	8,246	4.8
6 months	0.29	0.14	0.20	18,332	10.8
12 months	0.35	0.14	0.25	35,837	21.0

Source: IRESS

In relation to the table above, we note CWT traded 10.8% of its units of issue in the six months to 1 November 2010. This appears relatively low compared to the issued units traded over the same period of relatively comparable property trusts; the ING Real Estate Entertainment Fund (IEF) with 13.1%, PrimeAG Australia Limited (PAG) with 29.5% and Compass Hotel Group (CXH) 28.7%. Whilst the Coonawarra Australia Property Trust (CNR) and Redcape Property Group (RPF) are comparable to CWT, their relatively low



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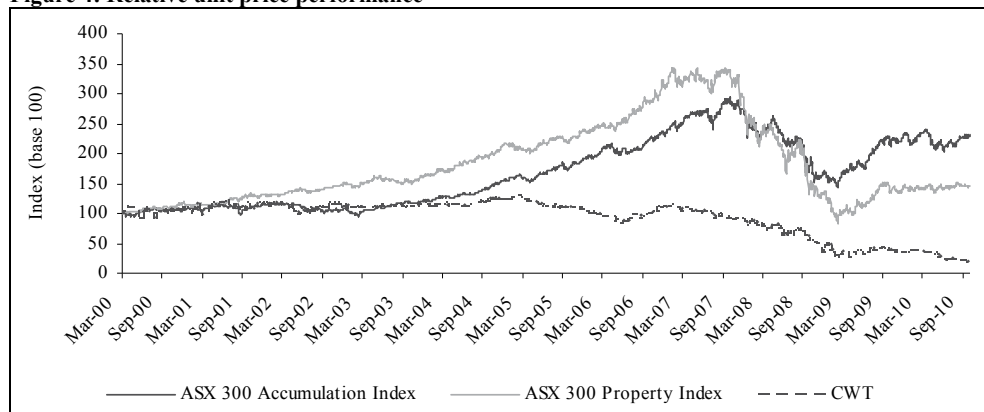
liquidity to CWT reflects company specific factors. CNR owns agricultural land and has a low market capitalisation of \$1.1 million while RPF owns and leases freehold land for pubs and bottle shops and has been experiencing debt-related issues over the past couple of years, potentially reducing the liquidity of their securities.

## 8.7 Relative performance

### 8.7.1 Security price

We compare the performance of CWT's units between 1 March 2000 and 1 November 2010, relative to the ASX S&P 300 Accumulation Index (ASX 300 Accumulation Index) and the ASX S&P 300 Property Accumulation Index (ASX 300 Property Index) in the figure below.

**Figure 4: Relative unit price performance**



Source: IRESS

In relation to the figure above, we note:

- between 1 March 2000 and 1 November 2010, CWT has generally underperformed the ASX 300 Accumulation Index and ASX 300 Property Index. This underperformance can be largely attributed to its exposure to the wine industry which unlike other sectors, experienced reduced profitability and declines in property valuations
- since the onset of the global financial crisis (GFC) (late 2007) and the market rebound of March 2009 CWT declined approximately 62%, underperforming the ASX 300 Accumulation Index (-42%) but outperforming its property trust peers in the ASX 300 Property Index (-71%).

### 8.7.2 Discount to NIV

A common unit price performance metric in relation to property trusts is the discount to NAV (or NIV in CWT's case). We note at 1 November 2010, CWT traded at a 61% discount to NIV. Comparable companies reflect similar discounts to NAV.





## 8.8 Distributions

During FY10, as part of CWT's capital management initiatives, in particular the retention of distributions, distributions paid have substantially reduced from historical levels as illustrated in the table below.

**Table 12: CWT Distributions**

Period	FY05	FY06	FY07	FY08	FY09	FY10
Distribution (cpu)	9.117	9.062	9.100	9.400	7.100	4.250
Tax-deferred component	28.01%	28.16%	18.42%	13.74%	12.46%	0.00%

Source: CWT website

## 9 Valuation

### 9.1 Valuation methodology

Under the Proposal, the Non-Associated Unitholders have been offered cash of \$0.24 per unit. As discussed in section 3 "fair and reasonable" is not a compound phrase. In order to assess whether this Proposal is fair, we need to determine the fair market value of a unit in CWT and compare that amount to the consideration pursuant to the Proposal.

In our view the NIV of CWT provides the best estimates of the fair market value of a unit in CWT. We have formed this view as:

- the Board of CWT has commissioned the Independent Specialists to determine the fair value of 85% of the underlying properties on the basis of a willing but not anxious buyer and seller allowing a reasonable period for the sale
- in forming their views the Independent Specialists have considered the terms underlying the leases of each of the properties
- the Independent Specialists have also considered the fair value of any water rights
- by implication the Independent Specialists have determined a going concern value
- the Directors of CLIL considered the value of those properties not considered by the Independent Specialists
- assets and liabilities not considered by the Independent Specialists or the Directors are financial in nature and should realise their book values.

#### 9.1.1 Valuation of a unit in CWT

Having regard to the above, we are of the opinion that, at the date of the report, the fair market value of a CWT unit is best represented by the NIV of 41 cpu as set out in section 8.4.2. In this context we note:

- we have based our opinion on the pro-forma NIV as, in our view, it is appropriate to consider the position of the Non-Associated Unitholders after incorporating the values determined by the Independent Specialists and those other factors identified in Section 8.4.2



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- while the Independent Specialists have based their values upon willing but not anxious buyers and sellers and allowed a reasonable time for the marketing and sale of individual properties they have not considered the implications of either CWT being perceived as an anxious vendor or a significant proportion of CWT's property portfolio being placed on the market at once. Both these factors could result in the funds realised being less than the independent valuations
- CWT units have historically traded at a discount to NIV. As indicated in section 4.3.1, CWT traded at a discount to NIV of:
  - 35% over the five years to 1 November 2010
  - 61% immediately prior to the announcement of the Proposal.

### 9.1.2 Other considerations

When valuing a minority interest in a property trust, one would normally make an adjustment to the NAV for operating costs which are not accounted for in the valuation of the properties in the trust. In relation to CWT, these operating costs generally comprise of responsible entity fees, management fees and other ancillary costs. If an adjustment were to be made, it would represent the capitalised value of these expected future costs. In our valuation above, we have not made any adjustment for operating costs on the basis that we are calculating the value of a unit in CWT on a control basis. In our opinion, investment management is a scalable business and we consider there to be many potential buyers who could acquire CWT, internalise management and incur only marginal additional costs. As such, when valuing a controlling interest in CWT, these buyers are likely to only include a small amount for incremental operating costs which we consider to be immaterial to our valuation.

### 9.2 Valuation cross check

Ordinarily, we would attempt to cross check a valuation of a unit in CWT by using an alternative valuation approach, such as the determination of an implicit earnings multiple and comparing that to market comparables. However, in the present circumstances we note:

- the Independent Specialists have valued 85% of CWT's property portfolio on the basis of the expected cash flows resulting from current leases and those expected from any lease renegotiations, implicitly taking into consideration any current over-renting
- the over-renting is evident in the yields on CWT's properties set out in Table 3
- the over-renting, and the 'run off' profile of that over-renting acts to distort CWT's earnings profile and makes any estimation of 'maintainable earnings' difficult
- the ability to compare any implicit valuation multiples for CWT with those of traded comparables is highly dependent upon the over-renting of CWT's properties and any equivalent over-renting associated with the comparables.

In light of the above, we have formed the view that any consideration of implicit valuation multiples would be confusing and potentially misleading and have not incorporated such a cross check in this report.



## **Appendix 1 – KPMG Disclosures**

### *Qualifications*

The individuals responsible for preparing this report on behalf of KPMG are Sean Collins and Ian Jedlin. Each has a significant number of years experience in the provision of corporate financial advice, including specific advice on valuations, mergers and acquisitions, as well as the preparation of expert reports.

### *Disclaimers*

Other than this report, neither KPMG nor the KPMG Partnership has been involved in the preparation of the Explanatory Memorandum or any other document prepared in respect of the Proposal. Accordingly, we take no responsibility for the content of the Explanatory Memorandum as a whole or other documents prepared in respect of the Proposal.

### *Independence*

During the course of this engagement, KPMG provided draft copies of this report to management of CLIL, the Responsible Entity of CWT for comment as to factual accuracy, as opposed to opinions, which are the responsibility of KPMG alone. Changes made to this report as a result of these reviews have not changed the opinions reached by KPMG.

Other than this report, neither KPMG nor the KPMG Partnership has been involved in the preparation of the Explanatory Memorandum or any other document prepared in respect of the Proposed Transaction. Accordingly, we take no responsibility for the content of the Notice of Meeting as a whole or other documents prepared in respect of the Proposed Transaction.

### *Consent*

KPMG consents to the inclusion of this report in the form and context in which it is included with the Explanatory Memorandum to be issued to Unitholders. Neither the whole nor the any part of this report nor any reference thereto may be included in any other document without the prior written consent of KPMG as to the form and context in which it appears.

### *Indemnity*

CLIL, as responsible entity for CWT has agreed to indemnify and hold harmless KPMG, the KPMG Partnership and/or KPMG entities related to the KPMG Partnership against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by KPMG, the KPMG Partnership and/or KPMG entities related to the KPMG Partnership in respect of any claim by a third party arising from or connected to any breach by you of your obligations.

CLIL, as responsible entity for CWT has also agreed that KPMG, the KPMG Partnership and/or KPMG entities related to the KPMG Partnership shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information provided by you or any of your representatives, which is false, misleading or incomplete. CWT has agreed to indemnify and hold harmless KPMG, the KPMG Partnership and/or KPMG entities related to the KPMG Partnership from any such liabilities we may have to you or any third party as a result of reliance by KPMG, the KPMG Partnership



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and/or KPMG entities related to the KPMG Partnership on any information provided by you or any of your representatives, which is false, misleading or incomplete.

*Professional standards*

Our report has been prepared in accordance with professional standard APES 225 "Valuation Services" issued by the Accounting Professional and Ethical Standards Board Limited



## **Appendix 2 – Sources of information**

In preparing this report we have examined the following principal sources of information:

- the Explanatory Memorandum
- the Scheme Implementation Agreement
- company presentations, annual and interim reports, property reports and ASX announcements of CWT
- external property valuations for CWT investment properties prepared by the Independent Specialists
- annual reports, company presentations and news releases of comparable companies
- industry reports including:
  - IBISWorld industry reports
  - Winemakers' Federation of Australia, "Wine industry must confront the reality of oversupply", published 19 November 2010
  - Wine Grape Growers' Australia, *The United Grower*, June 2010
  - Australian Bureau of Statistics (ABS), "Vineyard Estimates", 13 October 2010
- data providers including Capital IQ and IRESS

In addition, we have had discussions with the management of the CLIL and CWT and the Board of CLIL.



### **Appendix 3 – Valuation Methodologies**

#### *Net assets or cost based*

Under a net assets or cost based approach, total value is based on the sum of the net asset value or the costs incurred in developing a business to date, plus, if appropriate, a premium to reflect the value of intangible assets not recorded on the balance sheet.

Net asset value is determined by marking every asset and liability on (and off) the company's balance sheet to current market values.

A premium is added, if appropriate, to the marked-to-market net asset value, reflecting the profitability, market position and the overall attractiveness of the business. The net asset value, including any premium, can be matched to the 'book' net asset value, to give a price to net assets, which can then be compared to that of similar transactions or quoted companies.

A net asset or cost based methodology is most appropriate for businesses where the value lies in the underlying assets and not the ongoing operations of the business (e.g. real estate holding companies). A net asset approach is also useful as a cross check to assess the relative riskiness of the business (e.g. through measures such as levels of tangible asset backing).

#### *Capitalisation of earnings*

An earnings based approach estimates a sustainable level of future earnings for a business ('maintainable earnings') and applies an appropriate multiple to those earnings, capitalising them into a value for the business. The earnings bases to which a multiple is commonly applied include Revenue, EBITDA, EBIT and PAT.

In considering the maintainable earnings of the business being valued, factors to be taken into account include whether the historical performance of the business reflects the expected level of future operating performance, particularly in cases of development, or when significant changes occur in the operating environment, or the underlying business is cyclical.

With regard to the multiples applied in an earnings based valuation, they are generally based on data from listed companies and recent transactions in a comparable sector, but with appropriate adjustment after consideration has been given to the specific characteristics of the business being valued. The multiples derived for comparable quoted companies are generally based on share prices reflective of the trades of small parcels of shares. As such, multiples are generally reflective of the prices at which portfolio interests change hands. That is there is no premium for control incorporated within such pricing. They may also be impacted by illiquidity in trading of the particular stock. Accordingly, when valuing a business en bloc (100 percent) we would also reference the multiples achieved in recent mergers and acquisitions, where a control premium and breadth of purchaser interest are reflected.

An earnings approach is typically used to provide a market cross-check to the conclusions reached under a theoretical DCF approach or where the entity subject to valuation operates a mature business in a mature industry or where there is insufficient forecast data to utilise the DCF methodology.





### *Discounted cash flow*

Under a DCF approach, forecast cash flows are discounted back to the Valuation Date, generating a net present value for the cash flow stream of the business. A terminal value at the end of the explicit forecast period is then determined and that value is also discounted back to the Valuation Date to give an overall value for the business.

In a DCF analysis, the forecast period should be of such a length to enable the business to achieve a stabilised level of earnings, or to be reflective of an entire operation cycle for more cyclical industries. Typically a forecast period of at least five years is required, although this can vary by industry and by sector within a given industry.

The rate at which the future cash flows are discounted ('the Discount Rate') should reflect not only the time value of money, but also the risk associated with the business' future operations. This means that in order for a DCF to produce a sensible valuation figure, the importance of the quality of the underlying cash flow forecasts is fundamental.

The Discount Rate most generally employed is the WACC, reflecting an optimal (as opposed to actual) financing structure, which is applied to unleveraged cash flows and results in an Enterprise Value for the business. Alternatively, for some sectors it is more appropriate to apply an equity approach instead, applying a cost of equity to leveraged cash flows to determine equity value.

In calculating the terminal value, regard must be had to the business' potential for further growth beyond the explicit forecast period. This can be calculated using either a capitalisation of earnings methodology or the 'constant growth model', which applies an expected constant level of growth to the cash flow forecast in the last year of the forecast period and assumes such growth is achieved in perpetuity.

### *Enterprise or equity value*

Depending on the valuation approach selected and the treatment of the business' existing debt position, the valuation range calculated will result in either an enterprise value or an equity value being determined.

An enterprise value reflects the value of the whole of the business (i.e. the total assets of the business including fixed assets, working capital and goodwill/intangibles) that accrues to the providers of both debt and equity. An enterprise value will be calculated if a multiple is applied to unleveraged earnings (i.e. revenue, EBITDA, EBITA or EBIT) or unleveraged free cash flow.

An equity value reflects the value that accrues to the equity holders. To compare an enterprise value to an equity value, the level of net debt must be deducted from the enterprise value. An equity value will be calculated if a multiple is applied to leveraged earnings (i.e. NPAT) or free cash flow, post debt servicing.



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#### **Appendix 4 – Comparable company descriptions**

##### *PrimeAg Australia Limited*

PrimeAg Australia Limited invests in rural properties and water entitlements, as well as, undertakes cropping and livestock activities in Australia. The company's farming hub portfolio includes Emerald, Goondiwindi, Downs, Moree and Gunnedah hubs. The company was incorporated in 2007 and is based in Toowoomba, Australia.

##### *Coonawarra Australia Property Trust*

Coonawarra Australia Property Trust licenses land to grow wine grapes in Australia. It has 227 hectares of grapevines located in the Coonawarra region, South Australia. The company licenses vineyards to the members of the Coonawarra Premium Vineyards Project under a 13-year license agreement. It also offers wines. The company located in Frewville, Australia.

##### *ING Real Estate Entertainment Fund*

ING Real Estate Entertainment Fund operates as an open-ended property vehicle in Australia. It invests in the entertainment venues, hotels and bars. The company is based in Sydney, Australia.

##### *Compass Hotel Group Limited*

Compass Hotel Group Limited owns and operates hotels and taverns. Its portfolio includes 13 hotel and tavern sites in Western Australia. The company also engages in managing investment properties. The company is based in Duncraig, Australia.

##### *Redcape Property Group*

Redcape Property Group engages in the investment and lease of pubs and bottle shops in Australia. It operates a portfolio of approximately 104 pubs and bottle shops located along the Easter Seaboard. The company was formerly known as Hedley Leisure and Gaming Property Fund and changed its name to Redcape Property Group in December 2009. Redcape Property Group is based in Melbourne, Australia



## Appendix 5 – Rights issues

**Table 13: Comparable recent property equity issues (2009 to present)**

Comparables	Sector	Date announced	Amount raised (\$m)	Percentage of		Pro-forma gearing	Rights
				market cap	register		
Commonwealth Property Office Fund	Office	11-Nov-10	274.0	15.1%	15.8%	27.1%	Non-renounceable
CFS Retail Property Trust	Retail	24-Sep-10	540.0	10.9%	11.5%	27.6%	Placement
ING Real Estate Entertainment	Leisure	16-Jul-10	36.4	211.9%	200.0%	N/A	Renounceable
Brookfield Aust. Opportunities Fund	Diversified	10-Jun-10	30.4	262.9%	300.0%	N/A	Renounceable
Macquarie DDR Trust	Retail	7-May-10	198.9	343.2%	333.3%	64.4%	Renounceable
Lend Lease Corporation Limited	Diversified	25-Feb-10	806.0	18.5%	22.7%	N/A	Renounceable
Devine Limited	Development	22-Feb-10	54.4	43.1%	86.3%	28.4%	Non-renounceable
Charter Hall Group	Diversified	12-Feb-10	195.0	34.4%	40.0%	33.5%	Non-renounceable
Charter Hall Group	Diversified	12-Feb-10	110.0	19.4%	20.9%	33.5%	Placement
Cromwell Group	Diversified	24-Dec-09	73.0	14.1%	14.9%	46.9%	Placement
Abacus Property Group	Diversified	11-Dec-09	91.0	14.5%	15.0%	23.0%	Placement
Commonwealth Property Office Fund	Office	23-Nov-09	100.0	5.6%	5.9%	30.6%	Placement
ING Industrial Fund	Industrial	27-Oct-09	700.0	102.9%	128.6%	33.5%	Non-renounceable
Servcorp Limited	Operating	12-Oct-09	79.9	24.5%	1.4%	N/A	Non-renounceable
Valad Property Group	Diversified	23-Sep-09	22.4	8.7%	28.3%	43.3%	Non-renounceable
Folkestone Limited	Development	26-Aug-09	8.2	95.5%	171.9%	N/A	Renounceable
Challenger Diversified Property Group	Diversified	6-Aug-09	130.0	51.4%	59.2%	25.1%	Non-renounceable
Goodman Group	Diversified	6-Aug-09	1,279.0	93.9%	115.0%	26.7%	Non-renounceable
ALE Property Group	Leisure	5-Aug-09	76.0	33.2%	57.8%	56.9%	Renounceable
ALE Property Group	Leisure	5-Aug-09	29.0	12.7%	14.7%	56.9%	Placement
Australand	Diversified	27-Jul-09	475.0	51.2%	64.0%	27.6%	Non-renounceable
FKP Property Group	Retirement	25-Jun-09	324.0	121.0%	229.8%	34.0%	Renounceable
ING Office Fund	Office	17-Jun-09	415.0	43.0%	51.1%	26.6%	Non-renounceable
Mirvac Group	Diversified	4-Jun-09	1,100.0	48.9%	64.5%	21.5%	Non-renounceable
Charter Hall Group	Diversified	27-May-09	76.0	39.0%	44.3%	N/A	Non-renounceable



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Growthpoint Properties	Industrial	18-May-09	144.4	279.0%	130.1%	50.3%	Renounceable
Stockland	Diversified	13-May-09	1,983.0	35.9%	44.5%	26.9%	Non-renounceable
GPT Group	Diversified	7-May-09	1,684.0	79.3%	107.7%	25.0%	Non-renounceable
Bunnings Warehouse Property Trust	Industrial	7-May-09	150.0	27.8%	32.4%	20.9%	Non-renounceable
Dexus Property Group	Diversified	22-Apr-09	746.0	25.6%	32.5%	28.8%	Non-renounceable
Lend Lease Corporation Limited	Diversified	4-Feb-09	303.0	10.9%	12.4%	N/A	Placement
Westfield	Retail	3-Feb-09	2,900.0	12.2%	14.1%	34.6%	Placement
Commonwealth Property Office Fund	Office	22-Jan-09	192.0	13.2%	14.8%	24.6%	Placement
Abacus Property Group	Diversified	20-Jan-09	211.0	158.5%	130.0%	22.6%	Renounceable
<b>Mean</b>			<b>462.5</b>	<b>71.1%</b>	<b>78.8%</b>	<b>33.6%</b>	
<b>Median</b>			<b>192.0</b>	<b>35.9%</b>	<b>44.5%</b>	<b>28.6%</b>	

Source: KPMG Analysis, Company announcements, IRESS



## Appendix 5 – Rights issues (continued)

Table 14: Comparable recent property equity issues (2009 to present)

Comparables	closing price	pre-offer NTA	Premium / (discount) to			
			pro-forma NTA	1 day VWAP	5 day VWAP	10 day VWAP
Commonwealth Property Office Fund	(4.4%)	(24.6%)	(20.8%)	(4.9%)	(6.4%)	(6.1%)
CFS Retail Property Trust	(4.6%)	(7.9%)	(7.0%)	(4.5%)	(4.3%)	(4.9%)
ING Real Estate Entertainment	1.1%	(81.6%)	(57.2%)	6.0%	3.7%	1.5%
Brookfield Aust. Opportunities Fund	2.0%	(86.8%)	(61.3%)	(2.8%)	1.9%	(7.0%)
Macquarie DDR Trust	(14.1%)	(83.0%)	(47.6%)	(14.5%)	(15.3%)	(18.3%)
Lend Lease Corporation Limited	(18.7%)	93.0%	65.6%	(18.6%)	(16.0%)	(14.8%)
Devine Limited	(50.0%)	(76.0%)	(61.0%)	(50.2%)	(51.0%)	(51.1%)
Charter Hall Group	(13.9%)	9.1%	16.1%	(13.5%)	(9.9%)	(8.6%)
Charter Hall Group	(7.3%)	17.4%	25.0%	(6.9%)	(2.9%)	(1.6%)
Cromwell Group	(5.4%)	(8.4%)	(7.4%)	(5.4%)	(7.0%)	(6.6%)
Abacus Property Group	(3.6%)	(35.5%)	(33.3%)	(3.7%)	(3.4%)	(5.0%)
Commonwealth Property Office Fund	(5.1%)	(20.9%)	(18.0%)	(4.9%)	(6.3%)	(5.0%)
ING Industrial Fund	(20.0%)	(50.0%)	(28.4%)	(19.1%)	(21.5%)	(22.5%)
Servcorp Limited	(3.6%)	142.4%	89.6%	(2.0%)	(0.1%)	0.5%
Valad Property Group	(37.5%)	(58.3%)	(50.0%)	(29.5%)	(30.4%)	(21.9%)
Folkestone Limited	(44.4%)	(77.9%)	N/A	(33.0%)	(33.8%)	(37.7%)
Challenger Diversified Property Group	(13.0%)	(53.5%)	(42.0%)	(11.8%)	(11.5%)	(10.6%)
Goodman Group	(18.4%)	(52.9%)	(32.2%)	(23.9%)	(21.2%)	(16.9%)
ALE Property Group	(42.5%)	(46.4%)	(33.6%)	(42.8%)	(41.8%)	(39.9%)
ALE Property Group	(13.8%)	(19.6%)	(0.4%)	(14.2%)	(12.7%)	(9.8%)
Australand	(20.0%)	(56.5%)	(43.7%)	(20.3%)	(20.4%)	(20.0%)
FKP Property Group	(47.4%)	(87.0%)	(66.7%)	(47.1%)	(49.3%)	(49.7%)
ING Office Fund	(15.7%)	(65.4%)	(43.8%)	(13.7%)	(18.0%)	(20.3%)
Mirvac Group	(24.1%)	(59.0%)	(42.2%)	(22.4%)	(16.5%)	(9.4%)
Charter Hall Group	(12.0%)	(66.0%)	(56.0%)	(13.5%)	(15.2%)	(14.0%)



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Growthpoint Properties	6.7%	N/A	N/A	(4.2%)	(3.2%)	7.3%
Stockland	(19.4%)	(32.7%)	(24.8%)	(18.4%)	(13.3%)	(13.8%)
GPT Group	(26.3%)	(75.5%)	(63.2%)	(27.0%)	(23.9%)	(21.9%)
Bunnings Warehouse Property Trust	(14.0%)	(20.2%)	(15.7%)	(13.8%)	(16.2%)	(15.6%)
Dexus Property Group	(21.2%)	(51.1%)	(43.0%)	(21.7%)	(22.3%)	(19.6%)
Lend Lease Corporation Limited	(12.3%)	22.0%	N/A	(13.3%)	(10.2%)	(10.6%)
Westfield	(13.2%)	(16.9%)	N/A	(9.8%)	(11.6%)	(12.4%)
Commonwealth Property Office Fund	(11.1%)	(43.3%)	(39.4%)	(14.3%)	(18.1%)	(24.2%)
Abacus Property Group	22.0%	(79.8%)	(63.2%)	19.7%	7.5%	8.8%
<b>Mean</b>	<b>(15.8%)</b>	<b>(35.3%)</b>	<b>(27.1%)</b>	<b>(15.6%)</b>	<b>(15.6%)</b>	<b>(15.0%)</b>
<b>Median</b>	<b>(13.9%)</b>	<b>(50.6%)</b>	<b>(39.4%)</b>	<b>(13.8%)</b>	<b>(15.2%)</b>	<b>(13.8%)</b>

Source: KPMG Analysis, Company announcements, IRESS



# Attachment F

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The Directors  
Challenger Listed Investments Limited  
as responsible entity for the  
Challenger Wine Trust  
Level 15  
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SYDNEY NSW 2000

**16 December 2010**

Dear Directors

### **Proposal to transfer Scheme Units Taxation considerations**

This letter has been prepared for the purposes of inclusion in an Explanatory Memorandum dated on or about 16 December 2010 (**EM**) in relation to the proposed transfer of units in the Challenger Wine Trust (**CWT**), which would result in CK Life Sciences Int'l., Inc. (**CKLS**) owning all of the Units of CWT that are not held by or on behalf of Challenger Life Company Limited or its controlled entities (**Scheme Units**) (**Proposal**).

This letter provides a summary of the main Australian income tax, stamp duty and goods and services tax (**GST**) issues for certain Unitholders in respect of the transfer of their Scheme Units under the Proposal. This letter is provided solely for the benefit of Challenger Listed Investments Limited (**CLIL**) as responsible entity of CWT.

This summary is based on the laws in force and administrative practice as at 9am (Sydney time) on the date of this letter, and addresses only the position of Unitholders who acquire and hold their Scheme Units on capital account.

This summary:

1. does not deal with the taxation implications for Unitholders who hold their Scheme Units on revenue account or as trading stock, Unitholders that are temporary residents for income tax purposes or Unitholders that are members of Challenger Life Company Limited or its controlled entities;
2. is of a general nature only, does not take into account the specific circumstances of any particular Unitholder or any elections that might be available to a Unitholder under the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* (collectively referred to as **the Act**); and
3. does not constitute tax advice to Unitholders and should not be relied upon by them as such. There is no assurance that the Australian Taxation Office (**ATO**) or applicable Office of State Revenue (**OSR**) will agree with the comments in this letter or that any contrary view of the

ATO or applicable OSR would not ultimately be upheld by a court. All Unitholders should seek their own independent advice on the taxation implications of the Proposal having regard to their individual circumstances.

The representatives of Blake Dawson involved in preparing this letter are not licensed to provide financial product advice in relation to dealing in securities. Blake Dawson does not seek to recommend, promote or otherwise encourage any Unitholder to agree to the Proposal. The information provided in this letter does not take into account the objectives or circumstances of individual Unitholders and we recommend that Unitholders obtain their own independent advice in relation to the financial, legal and tax consequences of the Proposal.

Capitalised terms not otherwise defined in this letter have the meaning given to them in the EM.

## **1. Taxation on the net income of CWT**

We understand that CWT has not and will not make a distribution, and has not and will not determine to make a distribution, to Unitholders prior to the disposal of their Scheme Units in respect of the income tax year commencing 1 July 2010. As a result, Unitholders should not be presently entitled to any share of trust income for that year. Accordingly, Unitholders should not be subject to Australian income taxation on any part of the net income of CWT for the income tax year commencing 1 July 2010.

## **2. Transfer of Scheme Units**

### **2.1 Capital gain or capital loss**

Each Scheme Unit should be a capital gains tax (CGT) asset and the disposal of a Scheme Unit should be a CGT event. Unitholders will either:

- make a capital gain to the extent that the capital proceeds from the disposal of a Scheme Unit is more than the cost base of the Scheme Unit; or
- make a capital loss to the extent that the reduced cost base of a Scheme Unit exceeds the capital proceeds from the disposal of the Scheme Unit.

### **2.2 Time of CGT event**

The time of the CGT event should be when beneficial ownership of the Scheme Units ceases on the Implementation Date.

### **2.3 Capital proceeds**

The capital proceeds from the disposal of a Scheme Unit should equal the Scheme Consideration.

### **2.4 Cost base and reduced cost base**

The cost base and reduced cost base of a Scheme Unit should generally include the amount paid by the Unitholder to acquire the Scheme Unit plus any incidental costs associated with acquiring the Scheme Unit (for example, brokerage costs). However, the cost base and reduced cost base of a Scheme Unit is reduced by any non-assessable amounts which have been received in respect of the Scheme Unit (e.g., as indicated in the Annual Taxation Statement sent to Unitholders).

For Unitholders that acquired Scheme Units before 11.45am by legal time in the Australian Capital Territory (ACT time) on 21 September 1999, for the purpose of calculating a capital gain (but not a capital loss), they may choose that the cost base of those Scheme Units be indexed for inflation to 30 September 1999 (which would only be of any practical effect if the Scheme Units were acquired prior to 1 July 1999).

For Unitholders that acquired Scheme Units after 11.45am (ACT time) on 21 September 1999, they will not be entitled to choose indexation of the cost base when calculating any capital gain on disposal.

## 2.5 Discount capital gains treatment

Unitholders that are:

- individuals;
- trusts;
- complying superannuation entities; or
- life insurance companies that hold Scheme Units as a complying superannuation/first home saver account (**FHSA**) asset; and

who do not apply indexation to their cost base (as discussed in section 2.4) should be entitled to treat any capital gain they make from a disposal of a Scheme Unit as a discount capital gain if the Scheme Unit was acquired for CGT purposes at least 12 months before the Implementation Date. Companies are not entitled to discount capital gains treatment.

Discount capital gain treatment means that:

- for Unitholders who are individuals or trusts, only one-half of the capital gain remaining after offsetting any applicable capital losses will be included as assessable income; or
- for Unitholders who are complying superannuation entities or life insurance companies (that hold Scheme Units as a complying superannuation/FHSA asset), only two-thirds of the capital gain remaining after offsetting any applicable capital losses will be included as assessable income.

The "choice" to apply indexation rather than the discount capital gain provisions (where this choice is available, as discussed in section 2.4) must be made by Unitholders on or before the day they lodge their income tax return for the income year in which the disposal occurs. The manner in which they complete their income tax return is generally sufficient evidence of the making of a choice.

## 2.6 Net capital gain

Any capital gain or capital loss a Unitholder makes in respect of a Scheme Unit should be relevant to calculating the Unitholder's net capital gain or net capital loss for the income year ended 30 June 2011 (assuming the Unitholder has not adopted a substituted accounting period for income tax purposes).

A net capital gain for an income year is calculated by reducing any capital gains made during the income year by the following in the order as listed below:

- capital losses made during the income year;
- unapplied net capital losses from earlier income years; and
- any applicable capital gains discount (as discussed in section 2.5) or small business concessions.

If a Unitholder chooses to use the indexation option (where this is available, as discussed in section 2.4), capital losses are applied after calculating the capital gain using the indexed cost base.

A net capital loss will arise for an income year if all of a Unitholder's capital losses exceed the capital gains made during the income year. Net capital losses may be carried forward to offset capital gains in future income years (subject to particular loss integrity rules).

Note that capital losses cannot be offset against ordinary income, or carried back to offset net capital gains arising in earlier income years.

## 2.7 Foreign residents

If a Unitholder is not a resident of Australia for tax purposes they will generally not be subject to CGT on the disposal of their Scheme Units unless:

- (a) both of these conditions apply to them:
  - (i) the foreign resident Unitholder (and their associates) owned at least 10% of the Units in CWT either at the time of disposal of the Scheme Units or for at least 12 months during the 24 months before disposal of the Scheme Units; and
  - (ii) more than 50% of the market value of CWT's assets is represented (directly or indirectly) by real property in Australia; or
- (b) the Scheme Units have been used at any time in carrying on a business through a permanent establishment in Australia.

Where these conditions apply, the income tax consequences for foreign resident Unitholders should broadly be as outlined in sections 2.1 to 2.6 above. Where an Australian CGT liability arises, foreign resident Unitholders will generally need to lodge an Australian tax return and pay any applicable CGT.

Where these conditions do not apply, any capital gain made by a foreign resident Unitholder should be disregarded under the CGT rules.

## 3. Impact of legislation on the taxation of financial arrangements

The *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* made amendments to the Act that operate to tax gains and losses arising from certain "financial arrangements" on revenue account and on the basis of certain available tax accounting methods (**TOFA provisions**). Certain types of Unitholders (such as individuals and other entities which are considered small) may be exempt from the application of the TOFA provisions unless they make an election for the provisions to apply.

In general, the TOFA provisions should only be relevant to Unitholders in respect of their Scheme Units if they:

- acquired their Scheme Units on or after 1 July 2010 or have made certain elections for the TOFA provisions to apply to Scheme Units acquired before 1 July 2010; and
- a "fair value election" or "election to rely on financial reports" applies to the Scheme Units.

As the application of the TOFA provisions is dependent on the facts and circumstances of the Unitholders, Unitholders should obtain their own advice in relation to the potential applicability of the amendments contained in the TOFA provisions, in light of their own individual facts and circumstances.

## 4. Stamp duty

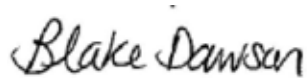
It is not expected that the transfer of Scheme Units will result in any Australian stamp duty. To the extent that a Unitholder does become liable to pay any stamp duty, CKLS has agreed, pursuant to

the Deed Poll, to indemnify the Unitholder against that liability (including in respect of any related fines, penalties or interest).

**5. GST**

No GST should be payable in respect of the transfer of the Scheme Units. Unitholders may not be entitled to any input tax credits (or may only be entitled to reduced input tax credits) for GST they incur on acquisitions to the extent to which the acquisitions relate to the transfer of the Scheme Units (e.g. adviser fees on which GST is payable). Unitholders should obtain their own advice in relation to the recovery of GST having regard to their own particular circumstances.

Yours faithfully



**Blake Dawson**

# Directory

## **Challenger Wine Trust**

ARSN 092 960 060

## **Australian Securities Exchange (ASX) code**

CWT

## **Responsible Entity**

Challenger Listed Investments Limited  
ABN 94 055 293 644  
AFSL 236887

## **Directors of the Responsible Entity**

BM Shanahan (Chair)  
MJ Cole  
IM Martens  
GK McWilliam  
IR Moore  
BJ O'Connor  
RJ Woods

## **Company Secretary**

C Robson  
S Koeppenkastrop

## **Manager**

Challenger Management Services Limited  
ABN 29 092 382 842

## **Address**

Level 15  
255 Pitt Street  
Sydney NSW 2000  
Telephone: +61 2 9994 7000  
Facsimile: +61 2 9994 7777  
Email: [cwt@challenger.com.au](mailto:cwt@challenger.com.au)  
Website: [www.challenger.com.au/cwt](http://www.challenger.com.au/cwt)

## **Registry**

Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Telephone (within Australia): 1800 830 977  
Telephone (outside Australia): +61 2 8280 7492  
Facsimile: +61 2 9287 0303

## **Financial adviser to the Responsible Entity**

Bell Potter Securities Limited  
Level 33, Grosvenor Place,  
225 George St  
Sydney NSW 2000

## **Legal adviser to the Responsible Entity**

Blake Dawson  
Level 36, Grosvenor Place  
225 George St  
Sydney NSW 2000

## **Independent Expert**

KPMG Corporate Finance (Aust) Pty Ltd  
10 Shelley St  
Sydney NSW 2000



Challenger Wine Trust Trust  
Level 15  
255 Pitt Street  
Sydney NSW 2000  
telephone 02 9994 7000  
facsimile 02 9994 7777

[www.challenger.com.au/cwt](http://www.challenger.com.au/cwt)





**X99999999999**

## UNITHOLDER VOTING FORM

I/We being a member(s) of Challenger Wine Trust (Trust) and entitled to attend and vote hereby appoint:

### STEP 1 APPOINT A PROXY

the Chair of the Meeting (mark box)  **OR** if you are **NOT** appointing the Chair of the Meeting as your proxy, please write the name of the person or body corporate (excluding the registered unitholder) you are appointing as your proxy

or failing the person/body corporate named, or if no person/body corporate is named, the Chair of the Meeting, as my/our proxy and to vote for me/us on my/our behalf at the Meeting of the Trust to be held at 3:00pm on Monday, 31 January 2011, at The Lyceum Room in the Wesley Centre, 220 Pitt Street, Sydney NSW 2000 and at any adjournment or postponement of the Meeting.

The Chair of the Meeting intends to vote all undirected proxies in favour of resolutions 1, 2 and 3.

Proxies will only be valid and accepted by the Trust if they are signed and received by 3:00pm (Australian Eastern Daylight Time) on Saturday, 29 January 2011, being not later than 48 hours before the meeting.

Please read the voting instructions overleaf before marking any boxes with an

### STEP 2 VOTING DIRECTIONS

	For	Against	Abstain*
<b>Resolution 1</b> Approval of the Proposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2</b> Amendments to Constitution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 3</b> Approval of the Securityholders Deed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For instructions on how to direct your proxy to vote either 100% of your holding or a portion of your holding refer to page 2 of this form.

 \* If you mark the Abstain box for a particular Item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

### STEP 3 SIGNATURE OF UNITHOLDERS - THIS MUST BE COMPLETED

Unitholder 1 (Individual) <input type="text"/>	Joint Unitholder 2 (Individual) <input type="text"/>	Joint Unitholder 3 (Individual) <input type="text"/>
Sole Director and Sole Company Secretary	Director/Company Secretary (Delete one)	Director

This form should be signed by the unitholder. If a joint holding, either unitholder may sign. If signed by the unitholder's attorney, the power of attorney must have been previously lodged with the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the *Corporations Act 2001* (Cth).



## HOW TO COMPLETE THIS PROXY FORM

### Your Name and Address

This is your name and address as it appears on the Trust's unit register. If this information is incorrect, please make the correction on the form. Unitholders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your units using this form.**

### Appointment of a Proxy

If you wish to appoint the Chair of the Meeting as your proxy, mark the box in Step 1. If the person you wish to appoint as your proxy is someone other than the Chair of the Meeting please write the name of that person in Step 1. If you leave this section blank, or your named proxy does not attend the meeting, the Chair of the Meeting will be your proxy. A proxy need not be a unitholder of the Trust. A proxy may be an individual or a body corporate.

### Voting 100% of your holding

You may direct your proxy how to vote by marking one of the boxes against each resolution 1, 2 and 3. If you do not mark a box in respect of a resolution, your proxy may vote on that resolution as they choose. If you mark more than one box against a resolution your vote will be invalid for that resolution.

### Voting a portion of your holding

All of your units will be voted towards each resolution unless you indicate a portion of your voting rights by inserting the percentage or number of units you wish to vote in the For, Against or Abstain boxes. The sum of the votes cast on each resolution must not exceed your voting entitlements or 100%.

### Appointment of a Second Proxy

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the Trust's unit registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- (a) on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of units applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded.
- (b) return both forms together.

### Signing Instructions

You must sign this form as follows in the spaces provided:

**Individual:** where the holding is in one name, the holder must sign.

**Joint Holding:** where the holding is in more than one name, either unitholder may sign.

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place.

### Corporate Representatives

If a representative of the corporation is to attend the meeting the appropriate "Certificate of Appointment of Corporate Representative" should be produced prior to admission in accordance with the Notice of Meeting. A form of the certificate may be obtained from the company's unit registry.

## Lodgement of a Proxy Form

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given below by 3:00pm (Australian Eastern Daylight Time) on Saturday, 29 January 2011, being not later than 48 hours before the commencement of the Meeting. Any Proxy Form received after that time will not be valid for the scheduled Meeting.

Proxy Forms may be lodged using the reply paid envelope or:



**ONLINE** >

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

Select the 'Proxy Voting' option on the top right of the home page. Choose the company you wish to lodge your vote for from the drop down menu, enter your holding details as shown on this form, and follow the prompts to lodge your vote. To use the online lodgement facility, unitholders will need their "Holder Identifier" (Unitholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the front of the proxy form).



**by mail:**

Challenger Wine Trust  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Australia



**by fax:**

+61 2 9287 0309



**by hand:**

delivering it to Link Market Services Limited, Level 12, 680 George Street, Sydney NSW 2000.

If you would like to attend and vote at the Meeting, please bring this form with you.  
This will assist in registering your attendance.